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CONSUMER FRAUD AND THE ELDERLY

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

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SECOND SESSION

ON

CONSUMER FRAUD AND THE ELDERLY

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CONSUMER FRAUD AND THE ELDERLY

MONDAY, OCTOBER 22, 1984

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Portland, OR.

The committee met, pursuant to notice at 9 a.m., in the city council chambers of the Portland City Hall, 1220 Southwest Fifth Avenue, Portland, OR, Hon. Bob Packwood (chairman of the committee) presiding.

Staff members assigned to this hearing: Chuck Harwood, staff counsel and Amy Bondurant, minority staff counsel.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The hearing will come to order.

The subject of this hearing, I think, is well known to those in the audience. It relates to fraud in the traditional sense of the word, fraud practiced on the citizens of this State and throughout the country, and principally on the elderly. I cannot help but notice it as I travel around the State and go to a senior center in La Grande or a senior center in Pilot Rock or Bend—it doesn't matter where—time and again and more frequently, unfortunately, than in the past, the issue will come up of the furnace repairman who said a furnace needed to be replaced when it didn't, of auto fraud, of health quackery, and of people who pass themselves off as physicians and offer treatments when they are not physicians. This issue is becoming serious enough that we are going to have to design legislation, in conjunction with the attorneys general of the States, so that the Federal Government and the States together can do what is possible to stop one of the worst abuses I've run across.

I say one of the worst abuses because I've discovered also that many, many of the elderly are reluctant to come forward and complain, whether it's because they don't want the publicity, or because they are afraid of the possibility of some retaliation, or because of the fact that they're just basically decent citizens who don't want to cause a fuss and so they allow themselves to get bilked without public complaint. What they don't realize is how much they could help others if they would come forward.

So, this hearing is designed today to let some of them come forward. I can assure, to the extent that the Federal Government has the power to do so and working hand in hand with the States so that we can cooperatively do so, we're going to do what we can to stop one of the most immoral, unethical abuses that I've run across since I've been in the Senate.

Our first witness today is the attorney general of the State of Oregon, Dave Frohnmayer, an old, old and close friend of mine. Dave, good to see you this morning.

STATEMENT OF DAVE FROHNMAYER, ATTORNEY GENERAL, STATE OF OREGON

Mr. FROHNMAYER. Thank you very much, Chairman Packwood. I would very much like to thank you and your staff for organizing this special hearing in your home State of Oregon. I commend your willingness and that of your committee to put fraud against the elderly on the top of your priority list. I'm pleased to be asked to be here today to testify on behalf of the Oregon Department of Justice and our financial fraud staff. We possess a strong personal and professional concern about the victimization of the elderly.

Each year we receive 50,000 inquiries from Oregonians who call and write for help, and we must be——

The CHAIRMAN. How many—50,000?

Mr. FROHNMAYER. 50,000 by the time one counts both the telephone inquiries and the written requests for assistance. What we've seen through this is an increasing percentage of well-constructed scam operations in the State of Oregon. We've learned that the more sophisticated we become in protecting Oregonians, the more sophisticated the scammers become in separating consumers from their money. Although we have many other problems in the marketplace such as a simple miscommunication between a buyer and a seller, a business and a consumer, we're mainly concerned today with this increasing new breed of creative cheaters.

The creative cheaters of the 1980's follow changes in technology. They use mass media advertising, sophisticated marketing techniques, and telephone boiler room operations to organize their fraudulent and illegal activities. Some are more sophisticated than the others but the one thing they seem to have in common is that they target their prey, and too often the prey is the elderly.

There are no adequate words in Webster's Dictionary strong enough to characterize this type of despicable operation. Your opening statement, Senator Packwood, I think adequately characterizes our contempt for the inexcusable sort of crime this is. To target a specific group in order to take advantage of their inherent weaknesses such as loss of sight or hearing or their isolation in their own homes is corruption at its worst.

Whatever the marketplace violation, whether it be the sale of bogus gold certificates or magazines, the Oregon elderly are hit harder and more often than any other group. Our statistics show that in one particular complaint area the elderly are targets in 9 out of 10 cases. That area is home repair and improvement.

You might have read recently in most of the national newspapers about an elderly Chicago widow who was making payments on a $50,000 repair bill for fixing her leaky toilet. "Only in a big city such as Chicago," we might say, but that is just not so. Just this last summer in Oregon we heard from a son of an 80-year-old man who discovered too late that his father had paid between $16,000 and $20,000 to have his lawn mowed and edged and a few hedges trimmed. He would have given them even more had it not been for

an alert bank clerk who called his son when his father had arrived to make a $5,000 withdrawal on his savings account. The yard care cons had left the area by the time the young man called our office.

Currently we're investigating a general contractor who charged an elderly Portland man $14,500 on a paint job that involved spray painting the aluminum siding on his front porch. That wasn't the first time for this contractor. During the previous 2 years the same elderly man had paid the same contractor $3,000 as a downpayment for a small repair job estimated to have cost actually $150. Altogether this contractor had pocketed $25,000 of this man's life savings for minor home repairs.

Over the last 2 years we've put together a task force to deal with the high volume of complaints from the elderly in the areas of furnace repair, weatherization installation and service. Through the joints efforts of our financial fraud office, the Portland Better Business Bureau, the State builders board, we were able to file actions against 13 companies who were linked through the participation of four individuals. The unlawful trade practices were stopped in this case and restitution was secured for some of the complainants.

The nature of the violations ranged from high-pressure tactics and misrepresentations to exorbitant overcharging, unnecessary repair work, and faulty, sloppy, dangerously inadequate repair work. Many just took the downpayments and left the State.

Some of our cases have better endings than others as far as fraud and the elderly is concerned, but one thing is clear, Mr. Chairman. Good consumer protection laws are very important, but by themselves they are not wholly effective. We need pooling of resources, we need exchanging of techniques with our Federal counterparts, we need to open up new lines of communication and cooperation in order to have strong enforcement of existing consumer protection laws. At the same time we must spend more time and effort on consumer education, and may I add as an important aside that your hearing this morning is one of those vehicles, Mr. Chairman, by which this can occur. Spreading the word on a few commonsense actions is sometimes all it takes to make the difference. The young, the middle aged, and the elderly are all potential victims of well-constructed scams, and only by joining in this massive effort can we slow down the increasing number of creative cheaters in this State.

I am pleased also to inform you, Mr. Chairman, that the National Association of Attorneys General, of which I'm an active member, has established a new study and task force area related to law and the elderly. My office will take an active part in pursuing this area, and victimization of the elderly in the marketplace will command a special focus for us. Together I believe we better can protect each other and those in our society who are particularly vulnerable because of their age or their isolation.

The CHAIRMAN. Dave, in your experience in the attorney general's office and in working with the national association, what can be done cooperatively between the attorneys general around the country and the Federal Government, and especially the Federal Trade Commission which probably would have a principal lead in this, to coordinate the effort?

Mr. FROHNMAYER. Well, two areas come immediately to mind, Senator Packwood. The first of those areas is to have a common set of priorities and targets. In many cases the scams that we're talking about move from State to State.

You're well acquainted probably with the so-called Williamson gang which periodically comes through on a sweep through Oregon, tells people of all age groups about repairs that they need, takes a downpayment, cashes it, and is literally gone from the community within a matter of hours before any work is ever done.

These are interstate in character. They require monitoring on a national scale, and their crimes are truly national in scope. It would be extremely helpful to have a national source of information that enables us more quickly to identify when this particular pack is coming through the State of Oregon as it does on an annual basis.

That's something that is peculiarly within the resources of the Federal Trade Commission or the Federal Government. If the existing authority or jurisdiction is not adequate, then that clearly is an area of intelligence gathering, if you will, that would be extremely helpful to the States.

Now, I will say that we have a consumer protection section within the National Association of Attorneys General and we are well wired into each other's offices in terms of the exchange of information; but, these groups move so quickly that a nationwide alert system would be extremely helpful, in my judgment.

A second and related area is that of determining at any one time what are the particular consumer protections priorities of the Federal Trade Commission. By "priorities" I don't just mean cases. It's one thing to have a long case that may take years and years to process against a particular egregious company or person engaged in interstate operations, but that by itself is only a single case. It doesn't necessarily indicate a priority and it doesn't necessarily deal with all the people in that same type of scam who are engaged in that activity; and so, a careful setting of priorities and then working those priorities through on periodic intervals such as every 6 months or so, so that the States and the Federal Trade Commission can truly work in tandem would be very helpful.

I realize we're talking about limited Federal resources as well as limited State resources, but I would point out that in the budget cuts that have hit the States as well as the Federal Government we find ourselves with reduced resources at a time when more and more one sees these highly organized efforts. I believe that a greater kind of cooperation could occur.

The CHAIRMAN. You know, I think you're right about the greater efforts with the Williamson gang type of thing. That is big enough that it's noticeable, and you can almost—if not chart their movement, at least predict their pattern. In my mind, that is not unlike the organized crime strike force where you're aiming at big fish.

What can we do, though, to get at the thousands and thousands of swindlers who are bilking millions and millions of elderly, and they are basically small-time swindlers operating almost out of their back pocket or a pickup truck? How can we find them all? What do we do with them even assuming we can catch them? And

my hunch is at the moment more of them get through the nets than we ever catch.

Mr. FROHNMAYER. Well, I think your hunch is correct, Senator Packwood, and that suggests the final area that I would offer to your committee; and that is to explore better means of prevention, and by that I mean consumer education. Consumer education that just isn't simply a pamphlet handout about how you can avoid being victimized. That's part of it.

I mentioned to you—and I mean sincerely—that the holding of a hearing of this kind where other people who may be the victim of this kind of thing hear about how easy it is to part with your money to someone who seems well meaning but is simply on the way to the bank to cash your check. It's very important that people know that with a few well-guided steps they can help to protect themselves. They don't have to buy on their doorstep. They don't have to fall for the first suggestion that their porch needs repair or that their house be inspected to see what new furnace they need.

But, for many people this is the only source of information they had, and if more citizens were available of the facts that they could call the Better Business Bureau, that they could call our financial fraud section, that they could call the regional office of the Federal Trade Commission, that they could ask an independent party about whether they're getting into something that is simpy designed to separate themselves from their money or whether it's really designed to improve the quality of their life and their home, that would be a big help.

The CHAIRMAN. I can give you an example—I hadn't thought of it until just now—of where education can make a difference, and it's just a simple thing. I'm trying to order two cords of wood for the winter just to burn in the fireplace in the house. I'm amazed at the different responses I get when I call for quotes. A cord of wood is 128 cubic feet, but it turns out that everybody isn't going to deliver the same amount of wood to you. Unless you know what you're asking—the ads in the paper will say cord of wood. Well, they mean a face cord as they call it, or it turns out it's a half cord, or you see a cord of wood for $90 as opposed to a cord of wood for $130, they're not talking about the same thing, and if you don't know what you're asking about—and this is a relatively simple thing, but if you don't know what you're asking about, you're going to get bilked.

Mr. FROHNMAYER. And I wish I could tell you that that weren't a continuing problem, but the very example you used, Senator Packwood, is one where our office had to take action last year because of the wide disparity of prices. Lots of time it isn't whether wood is wet or dry or how far it came from. A cord of wood is not a pickup load of wood.

The CHAIRMAN. That's correct.

Mr. FROHNMAYER. A cord of wood is eight-by-four-by-four, and that's a lot of wood. And many people who believe they're buying a cord of wood get a small pickup load, and then they wonder why it cost so much. That is a simple matter of education, really.

The CHAIRMAN. The only success I've ever had is with a fellow that comes around with a pickup load of wood wanting to sell it at an exorbitant price—and I count on him showing up about the first

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of November—and I take my tape measure out and I measure it, and I say no, no, I'm not interested. By the time we're done his price is about a third of what it started out. He always comes back, so I'm assuming even at that price he's making some money on the wood. I almost hesitate to ask where he got the wood, but at least I'm onto his ways; but I'll bet you that he only comes to me when he hasn't been able to sell that someplace else for three times the price that he'll finally settle for because it's getting toward dusk, and he wants to get home.

Mr. FROHNMAYER. Senator, let me offer this last thought on consumer education, because it is an appropriate area for study through the resources in the nationwide reach of agencies such as the Federal Trade Commission.

I'm sure that there are strategies that are much more effective than others to inform America's consumers and Oregon's consumers about the common pitfalls that they will run up against in the marketplace. There may be ways of reaching the elderly and shut-in population more effectively than others. Is it through public service announcements? Is it by some handout or some little warning that can be mailed in the various mailings that go to him? Is it something that can be distributed through senior service centers? Is it something that Meals-on-Wheels or other voluntary organizations can do?

There are ways of measuring how effectively the impact of a message gets across to various groups of our population, and I would strongly urge you, through the resources of you committee, to explore those vehicles of consumer education, because I'm sure a lot of it is well meaning but misguided because it doesn't hit the target. But we know that when people understand the message about how to become better participants in the marketplace that it really does make a difference.

The CHAIRMAN. It does, a group like the Better Business Bureau does a first-rate job. I don't know if you noticed in the paper today—I don't know which paper it was. I just got here from Washington yesterday, and I wake up early in the morning the first day or two I'm here so that I've read two or three papers this morning already. But, in one of the papers, there is about a two-thirds page ad from the Better Business Bureau on home health care and nursing homes and the difference between Medicare and Medicaid and who to call for questions. It is an excellent ad in terms of education and who to call for help if you think there's a possibility you're being swindled. That kind of education, that kind of help for many people can be quicker and more relevant than what Government can do.

Mr. FROHNMAYER. I agree with you, and I think the private sector has really filled an enormous number of gaps, because, after all, they have a stake in it to, as you well recognize.

Just to reiterate the point we've made, it's particularly telling in the season now with the elections just on the horizon, because all of us who are candidiates receive in the mail brochures from newspapers saying here's how you reach your readers, and we receive communications from radio or television stations telling us here's how you reach your target audience. Why don't we do that for con-

sumer education? It ought to be a fairly easy undertaking if we target it as a responsibility?

The CHAIRMAN. I'll close with one of the easiest tricks I discovered. I'm not all that inept at home repair. I can do most of my own plumbing, and I can do most of my own minor wiring, much to the frustration of my wife who is convinced I'm going to burn the house down or electrocute myself as I'm doing it; but I'm not about to get up on the second floor and try to regutter the house or something of that nature.

When you get advertisements in the mail from people who do home repairs, or you call somebody up, if you just ask them for reference. I've discovered that quickly gets rid of the fly-by-nights. Most are not going to send out any references, while the reputable companies will. And, with no more than half a dozen phone calls, you can check reasonably fast as to whether the work they've done for somebody else was satisfactory or not.

Mr. FROHNMAYER. Senator, again, thank you very much for the opportunity to share our concerns.

The CHAIRMAN. Dave, thank you for coming. See you soon.

Mr. FROHNMAYER. Thank you.

The CHAIRMAN. Now, could we take a panel consisting of Patricia Rohlf from Central Point; Bill Gordon representing the Gray Panthers; Dr. Benjamin Wilson from Beaverton; Dr. Thomas Reardon, the president of the Oregon Medical Association; and Dr. Robert Kime, professor of the department of school and community health from the University of Oregon.

Are you Mrs. Rohlf?

Ms. ROHLF. Yes.

The CHAIRMAN. Good. I have a place for you right up there.

Ms. ROHLF. Right here?

The CHAIRMAN. Yes.

Ms. ROHLF. Thank you.

The CHAIRMAN. I might say, Ms. Rohlf, I found your statement particularly interesting.

Ms. ROHLF. Thank you.

The CHAIRMAN. I have seldom run across anybody who has spent as much time running down quacks and frauds and devoting personal attention to it as you have. I hear lots of hearsay information and lots of secondhand information, but very seldom do I hear as much firsthand information as you've got.

Ms. ROHLF. Thank you.

The CHAIRMAN. Does anybody have any objection to going in the order that the names appeared on the panel; in which case, we would start with Ms. Rohlf? Are you ready to go?

Ms. ROHLF. I think so, if I can catch my breath.

The CHAIRMAN. Sure. Why don't we go ahead and take Mr. Gordon first while you're catching your breath if that's all right with you.

Ms. ROHLF. OK.

Mr. Gordon.

STATEMENT OF BILL GORDON ON BEHALF OF THE GRAY PANTHERS

Mr. GORDON. My name is Bill Gordon. I'm representing here the Gray Panthers, but I am also active with the United Seniors of Oregon as well as the Portland Multnomah Commission on Aging.

I have had occasion to look through this very wonderful pamphlet dealing with quackery, a $10 billion scandal. I want to focus my remarks primarily on quackery as it relates to the elderly.

You already made reference to the fact that the elderly, obviously, are the most vulnerable, and I think you've indicated some of the reasons. I think some additional reasons might be the fact that they are isolated very frequently because of the way—the demography of our country, children frequently are far away, and so on, and by virtue of the fact that they are vulnerable by virtue of the fact that may have come from an environment and a situation where they're much more trusting than what exists at the present time; and so, they happen to be.

In addition to that, of course, the elderly are subject to all kinds of ailments, a high incidence of cancer, et cetera, and so that when somebody comes along and offers something in the form of a cure, whether it's a faith-healing cure or whatever, they tend to submit and become a victim.

I want to focus, however, my basic attention to the fact that we do have three major Federal agencies that are responsible for controlling this sort of thing. There's the Post Office, there's the Food and Drug Administration, and Federal Trade Commission. I noticed some figures here which are very startling. You said what kind of priorities should be given.

Now, then, the FTC which is primarily charged with unfair and deceptive practices and so on, false advertising and so on. Now, I notice, for example, that the budget in 1982 was $68.8 million and the budget for 1983 was reduced to $66.9 million. What it says to me that there is no high priority on this most important element of fraud which is the way elderly people are ripped off. So, it seems to me that we ought to—and unfortunately what I think is happening in our country is there is a big slogan, you know, get government back off our backs. If you're going to get government off our backs that means some of the most important enforcement agencies like the Post Office and so on—and, incidentally, I might say of the three—and this is the information I've gathered from looking over a lot of material—is doing the best job, but even they are stymied in the fact that frequently they cannot take the proper judicial action. Sometimes if the witness refuses to appear, I don't think the laws are tight enough to enforce it.

I'm going to give you another little interesting bit of data relative to the fact that in the—I think it's the FTC—they appropriated $700,000 for quackery, 14 professionals and 6 clerical people in 1983. Now, then, 14 professionals and 6 clericals to cover a population of 240 million. It seems to me that there again is a wrong approach in terms of priorities.

Now, the other few comments I'd like to make has to do with some of the things that Frohnmayer has already said. I think there needs to be real liaison, cooperation, and coordination between the

Federal and the State; because so much of the rip-off obviously takes place on the State level, but at the same time, as Mr. Frohnmayer has indicated, they just move around from one place to another.

I also believe that there is a role and a function for an organization like mine in terms of the hotlines, in terms of creating a network. We have many senior centers. We have meal sites, and so on. Those are the places where so-called education takes place. I think Mr. Frohnmayer is right. A pamphlet is not going to do very much good to somebody who is home bound, and so on. First of all, even if the pamphlet did get to that individual it wouldn't do any good. The education and the information has to be geared to where the people are at. It has to be also geared to children when they are available, and the responsibility for the coordination and the organization of this kind of an effort must necessarily be a governmental effort.

We are a voluntary organization, for example. We don't have any budget. We work with volunteers. We are part time. We don't have a staff. We have hours. We do have a hotline on a variety of things. The Portland-Multnomah Commission on Aging has the responsibility of being an advocacy of the seniors in our area and through our many subcommittees, and so on. We'd be very happy to coordinate and to assist in anyway that we could in order to try to eliminate—not eliminate. We can't eliminate it, but at least to control it in such a way at least that the rip-off isn't going to be so massive and so extensive. I'm not now talking about all the other things that Mr. Frohnmayer has mentioned, all the other consumer concerns. I'm only talking about quackery. That's a patient who is terminally ill, a patient who has got severe arthritis, if somebody comes along and gives them something that they think is going to cure them.

But, one other thing before I close, and that is that there is also a responsibility on the part of FDA to control—to have greater control on the so-called legitimate advertising. How much money do older people have to spend on all kinds of painkillers? The advertising is fierce, and since there's that kind of fierce advertising I'm sure there must be a heck of a lot of money. Aspirins are made out to be something more than aspirins. Tylenol is made out to be something remarkable, and they all contain pretty much the same sort of thing. So, in addition to the control of quackery I think there needs to be some emphasis, also, on how to control false or misleading advertising that fools a great many people.

I think I've taken up my 5 minutes. Thank you.

The CHAIRMAN. I hope we have taken a good step forward on drugs in terms of the generic bill passed this year, which I think in terms of many common medicines, prescription drugs——

Mr. GORDON. Would you speak a little louder? I'm a little hard of hearing.

The CHAIRMAN. I hope we made a serious step forward this year in the generic drug bill that passed, because many of the drugs commonly prescribed by name can be prescribed generically.

I've been in this business long enough to say I hope it works. I think it will work, but I've been burned a couple times in the past where we have passed things and it turned out they didn't work

the way we thought they were going to work, but at least we tried a step forward.

Ms. Rohlf.

STATEMENT OF PATRICIA ROHLF, CENTRAL POINT, OR

Ms. ROHLF. Yes; my expertise, if you can call it that, comes from my own personal experiences as a disabled person for the last 10 years. I've had a lot of experience with the quacks, but I'll try to touch the high points, because I only have 5 minutes.

The first thing I'd like to talk about is quackery and the press, and that's also related to health food stores. If you walk into most health food stores one of the first things you see as you come in the door is all sorts of books and brochures and advertisements. I brought a file, which I'll leave for you as an exhibit. Here are just a couple of the high points in here. There's one book that tells you that if you plug up one nostril and breathe through the other one all day it will cure certain ailments. Then if you have a different set of ailments like maybe digestive troubles or arthritis, to plug up the other nostril. People believe these things, because somehow back in our education we're trained to believe everything that's printed, and I really think that people need to question things that are printed and not just accept them at face value.

I could spend time going over some of the very strange things in here like herbal formulas and for example things like if you have arthritis, take Formula 22. You read the label on some of these pills and some of these things that are found in health products, and they are strange--some of them are glandular, some are herbals, some are useless things such as silica found in some tablets. The reason people get caught up into this is because these advertisements are really quite convincing, and they really claim a lot of very fabulous and amazing things as to what they will do.

My father is good example of this. Just yesterday my mother counted the bottles that he has in his bedroom, and he has 94 bottles. He's been treated for bladder cancer, and he refuses to go to the doctor because he believes what the health food store clerks tell him; that if he takes a combination of cammomile tea and pancreatic enzymes, and et cetera, et cetera—it's interesting that each clerk tells him something a little different—that he won't have anymore trouble—the way they put it is that "cancer cannot live in your body," and he believes this. A lot of people do. So, it seems to me that there needs to be something done about misleading and false advertising. Where is the dividing line between the first amendment, freedom of the press, and these kinds of things that are printed?

The CHAIRMAN. Well, the Supreme Court has made a significant difference on that. They'll go a long way toward protecting what you and I might call political speech. They are much less receptive to out and out fraudulent advertising, and there they have clearly said that that does not fit in within the same broad protection that they give to political speech, even though you and I might think some of the political statements are absolutely libelous slanderous, or outlandish. The Court will allow that in political speech, but not necessarily in advertising.

Ms. ROHLF. I realize I don't know enough about politics to know how this should be handled. I just know that it's disturbed me, when I see people that I know believing in things like this because of the claims of the advertisers.

The next thing I'd like to mention is health food store clerks. I've made sort of a hobby of going into health food stores with imaginary ailments, and I think up all sorts of very creative ones, walk up to the clerk, and ask them what they might suggest for this or that or one thing or another like brain tumors, you name it. It's very interesting what they tell you. Sometimes they'll pull an herb bottle off the shelf. It won't say on the bottle that it's for this or that, but they write on it in their own handwriting "this cures cancer, this does this or this does that." I've seen them do this for other patients, too. I mean customers, I guess you'd call them.

One health food clerk that I observed told an old lady about 80 that this would actually cure her "pressure." She didn't say high blood pressure. I thought what does it mean to cure someone's pressure. It sounds rather dangerous to me. But, anyway, that's an example—and I've observed many, many such instances.

When I got involved in this business of the health food store clerks, I was sort of mad one day, and I went home and I began to call all the agencies in Medford that I could because I wanted to complain about it and I wanted to find out who polices this. Each one referred me to another agency, and I must have spent a couple of days being referred from one agency to the other, and finally I hired a paralegal person to check the laws. I should have done that in the first place. They found that the Oregon State Board of Medical Examiners is supposed to do this, but I called them to ask them about this, and of course I'm on their side because I don't see how they could possibly do this. I mean they said that because of lack of funds and personnel they had to limit their activities to the policing of physicians. I don't know how health food store clerks could be possibly controlled.

I guess that's about all I have to say on that area, except I can give you many examples some of which were in my testimony, my written testimony.

The CHAIRMAN. I might say she has about a 20-page statement, and it is a litany of well documented quacks, frauds. It's some of the best evidence that I've run across. You've got a number of acolytes in there from the agencies that you've dealt with thanking you for calling information to their attention. You were the only one who called it to their attention.

Ms. ROHLF. Well, I'm sure there are many other citizens that have similar experiences to me, but the thing of it is I get awfully mad when this happens to me, and so, I'm spurred on to do something about it.

I don't know if I've used my time up or not, but did you want me to mention Dr. Clary or any of these specific things?

The CHAIRMAN. Why don't you go ahead and use that one doctor, because it was a good example?

Ms. ROHLF. I went to a dentist in Lake Oswego just to have my teeth done, because I hadn't gone for about a year. I had been told by a friend that he was really concerned with metabolism, and all this. I wanted to go to him because at that time I was much sicker

than I am now. Sometimes it would be hard even to sit through a 15-minute appointment, so I thought maybe he'd be sympathetic.

Well, I walked in, and before he even worked on my teeth he started talking about nutrition and diet and saliva tests and urine testing and iridology and all this kind of thing. Before he even completed examining my mouth he managed to do an iridology test which is something that's related to healthology. In iridology they take a magnifying glass and look in your irises, and the theory is that they're supposed to be able to tell you everything that's wrong with you just by looking at your irises. The left eye supposedly covers one part of your body, and the right eye the other part of your body.

He held this magnifying glass up, and he'd go "aha, I see you have an inflammation in your whatever, your liver or your right kidney," or something like that, and each time it was like a major, you know, discovery. He acted like he was just on a gold mining expedition or something. He would say it with—he was a very dynamic person, very—almost excitable, I would say, almost hyper, and, you know, it was impossible to ignore him. I saw some patients that were in there with me that day that were very turned on by him.

Anyway, to make a long story short, he told me I had 12 or 13 cavities, and I only knew of one, and I really questioned that, so I just had him fill one. I went home to Medford and went to my own dentist who found only one recent filling, the one that Dr. Clary had filled, so that was health fraud right there, to tell me I had more cavities than I did; but I was sort of mad about him because at the same visit he said are you talking, supplements—he started asking about my history. "Are you taking hormones," and this and that, and I said yes. He said well, "get off of all those." "Go home and throw them all away," and I got sort of mad at that, and so, I went home and I began to call. I didn't know who to complain to, but I just was mad.

Finally I found that the board of dental examiners would be the one to call. So, I called and complained to them, and they told me to write a letter of my experience. They wrote me back in a few weeks and said that they'd had other complaints of Dr. Clary and would I please—would I be willing to consider going to him as a patient and reporting to them my experience. So, I said I would. It was very interesting. They said do whatever he tells you.

In the course of the 3 or 4 months that I saw him he sold me a lot of different vitamins and minerals, told me to go home and throw away the vitamins and minerals that I had before, sent me to have blood tests done, lab tests, hair analysis.

Interestingly enough when he first looked in my eyes he told me I had wonderful adrenal glands. When the hair test came back he told me I had terrible adrenal glands, which right there tells you that some part of his testing apparatus doesn't hold up.

I went to one of his lectures that he periodically does. It was on Northeast Broadway at one of these places where they have yoga and all this kind of thing, and in the intermission—(I kept notes on his lecture) and in the intermission he tested everybody's saliva, and he'd go "ah, ah, there! see!" and, "you know, you got to come to my office and buy my pills."

Anyway, I ended up with five or six or seven reports to the dental board. I never did hear what happended to Dr. Clary, but I just hate to see his type continue—oh, I've got to tell my final experience. This is a real good one. He put me in a dental chair, and he put a cuff on each leg from the ankle to the knee. He called it his leg squeezing machine, and it squeezes each leg for 5 seconds, and he told me this would flush the toxins out of my body.

Well, I went home and did some research on that at the library, and it's called a pneumatic intermittent compression machine, and it was designed to keep post surgical patients from developing clots in their legs. It has no other claim for anything but that, and that's in my report—I have a whole file here on Dr. Clary that I will leave for exhibit.

The CHAIRMAN. As I said to the group here, her statement has at least another half a dozen cases like this, in some cases health food stores and in some cases people passing themselves off as physicians, but it really is—it is well documented, and you're to be congratulated.

Ms. ROHLF. Well, it seemed to me that there were many patients going to him that were not aware of any of the hazards involved.

[The statement follows:]

STATEMENT OF PATRICIA ROHLF, B.S.

HEALTH FRAUD AND QUACKERY, PARTICULARLY AS AFFECTING THE DISABLED AND ELDERLY

Vulnerability of the elderly and disabled to quackery

Persons with chronic health problems, (and some of these problems can be very serious and difficult to treat) can become frustrated at not achieving a more rapid improvement or cure. "Doctor shoppng" can be a common result. The fact that the patient is an elderly person or a disabled person may cloud the issue in the physician's mind. Symptoms or signs which, if seen in a young person would be considered a "real" illness, may be attributed in the physician's mind to just a part of growing old, and he may not be quite as aware of the possibility that the patient may have a legitimate and treatable disease.

Physicians are busy people, and an elderly or chronically ill person may feel ultimately that his problems are not being dealt with adequately in a brief appointment.

Sometimes a person with a rare problem, one which is more difficult to diagnose may go from doctor because he is not referred to the correct specialist. An example of this is a patient I personally know who was ultimately diagnosed as having acute intermittent porphyria. She was first sent to an internist who said she had an intestinal problem and treated her for that. There was no improvement so she went to a neurologist who said she had a back problem with pain radiating to her stomach. She was put in the hospital for three months and had her legs in traction. Finally they performed surgery and severed some spinal nerves to try to relieve her pain. Finally she was sent to a psychiatrist because it was believed her problem was psychiatric. Because of this she lost her job as a teacher and was confined to a mental hospital. While in there she was finally diagnosed as having porphyria. Now she is again working and under proper treatment.

There is no particular blame attached to the preceding anecdote, but it illustrates one of the many contributing factors why people may become disenchanted with establishment medicine.

The high cost of medical care cause both disabled and the elderly to sometimes have to forego bonafide medical attention. I am a disabled person, living on Social Security and receiving medicare. It is extremely difficult to find any insurance company who will insure me to supplement the medicare. Persons who need medical care the worst often have the hardest time obtaining that care.

Inadequate education about health matters, and a lack of sophistication about medical consumerism are also contributing factors.

How patients and quacks come in contact

The most common ways that patients get involved in quackery are word-of-mouth from friends, the press, which will be dealt with later, and through health food stores.

Quackery and the press

Legitimate newspapers seldom, if ever, publish ads for quack nostrums. However, "Health food store magazines" and books sold in health food stores, usually placed close to the door of the health food store, are often the source of many persons belief or faith in quack remedies, questionable treatments such as colonics, exaggerated claims for vitamins and "supplements", and so-called authorative pamphlets and books by people with naturopathic degrees, or healthology degrees, and the title "nutritionist, etc. There are currently several studies being done concerning mail-order degrees, and I hope to have my dog eventually have a string of degrees as long as his hairy leg and paw.

Clearly, there needs to be some kind of regulations, restrictions, or policing of publications which print utter nonsense such as the bee pollen pamphlet which I am submitting for exhibit. Where is the line between freedom of the press, and the printing of false "information", false advertising, imaginative speculation and plain dishonesty? I am also submitting for exhibit a wheel on which you can dial the disease you have and then the wheel tells you which formula or herbal combination to take to cure your ailment. Both the medical ethics and the truth of this type of things is highly questionable.

Health food stores

Prescribing by clerks in health food stores is a common occurrence. I personally have witnessed a number of these incidents. One individual case: my mother and I were in a health food store in Medford to try to return a juicer my father had purchased at an inflated price and was unnecessary because they already had one juicer. While we were dickering about this an old lady about 80 came in. My mother and I stepped a few feet away to allow this lady to be waited on. In a quavery voice she asked "can you give me something that will help my pressure (blood)? It costs so much to go to the doctor and the prescriptions are so high that I just can't afford it all." The clerk and manager, said "yes, of course, just take this garlic. I'm sure that it will take care of your pressure!" The old lady bought it while my mother and I, a few feet away up an aisle were mouthing to each other, "Why she is prescribing!". As the old lady was walking out an old man came in. So my mother and I said "let's listen to this one, too." We edged closer up the aisle until we were within a few feet of the cash register, but hidden behind a high stack of products. The old man said (he was about 75) "I have so much trouble with my arthritis. Can you give me something for it? The doctors just don't seem to be able to help me. I go back again and again. The manager sold him several bottles, one I was not sure of, but the others were ginsing, calcium lactate, and licorice root. The manager said "I'm sure this will really help!"

There were no new customers so we resumed out juicer business. And as we were getting ready to leave I mentioned that I had been diagnosed as having under functioning adrenal glands. (Baiting her) I mentioned that I was taking adrenal steroids, and that it was expensive and that it was a trial to have to keep going to the doctors for prescriptions, etc. The manager said (picking up a bottle from the shelf "here are some adrenal pills that I'm sure will take care of your problems. If you take this you won't need to take the other medicine and you won't need to go to the doctor for that anymore. I said "what are they?" and took the bottle in my hand. She said "Oh, these are the best thing for your problem. They are the whole adrenal gland, freeze dried, and not cooked, so they are still active!" I read the label, noted the name of the company manufacturer, and the title: "adrenal glandular tablets".

I decided to research out this product. I wrote a letter to the company and requested a copy of any assays which they might had done, with the exact hormones contained therein, and specific amounts of hormones found in each tablet. They did not answer so I called them long distance. They simply said they did not have this information. I asked them if these pills were potent enough or contained the proper hormones to treat Addison's Disease or other varying degrees of adrenal insufficiency.

She said no claims were made, that it was a food supplement. I began to collect the names and addresses of numerous companies selling this same product. Finally I found one company who was willing to give the vital statistics. About 8 different adrenal hormones were listed which are manufactured in the adrenal cortex. But since the whole gland is used the hormone adrenalin from the adrenal medulla was

also present. I checked out a endocrinology textbook from the medical school and began to read up on the treatment of Addisons Disease. I found that in order to obtain enough cortisone to have any physiological effect on a Addisonian patient a person of average weight would have to swallow two bottles of adrenal glandular tablets per day, of 200 tablets each, from this particular company. Further research indicated that the hormones as found in the health food store product are destroyed by the stomach acids and in the process of digestion. Finally, two entire bottles of these tablets would give the user a dangerous amount of adrenalin. My conclusion Adrenal glandular tablets are a complete fraud.

I have since amused myself by walking into different health food stores and asking for remedies for various ailments, some manufactured and as interesting as I could make them, and have been bemused because different stores have recommended entirely different remedies. Some suggest that I see a "healthologist". Some recommend that I go to a "health practitioner" and of course all have something to sell.

My own father is an excellent example of an elderly person being victimized. He is 75 years old and has had three surgeries for bladder cancer. He has also had his prostate gland removed and has diabetes. He now refuses to get his bladder checked periodically because he has read in some of his "books" that if you drink camomile tea, take lots of Vitamin C, and take pancreatic glandular tissue pills that one "cannot have cancer". Before his prostate was removed he also claimed that he could solve the prostate problem by taking pills made up of ground up prostate tissue. He also believed Zinc tablets would help and consumed hundreds of these, saying that they also made him feel better. His belief is so profound in many of the things that he takes, particularly Vitamin E and B vitamins that he claims that he feels wonderful "in five minutes" after taking them. The latest rage is bee pollen. Before that it was lecithin. Each new thing, after getting ahold of some book in a health food store, seems to be the cure-all that solves virtually every health problem and he urgently urges the rest of the family to all immediately embark on a course of vigorous use of the current fad. Our great worry is that he will neglect his bladder cancer problem until it is too late, because he adamantly refuses to seek legitimate medical attention. My father does not really have any education in medical matters; he likes to sit at home and read his "books" which is easier that going to the doctor and cheaper, too, from his point of view. He likes to think that both he and the authors of his "books" are smarter than the doctors.

After the episode in the health food store, I was curious as to who regulates, investigates or otherwise deals with this obvious unauthorized practice of medicine. I start phoning around trying to find out who is responsible. I got referred from agency to agency. Finally in desperation I called the Board of Medical Examiners in Portland. They said they too were not covering that area. Finally I hired a paralegal person to research for me, in the law library, this matter. The law reads that the investigation and responsibility for decisions about turning over such matters to the attorney general lies with the Board of Medical Examiners. Since I had already talked to them I found this puzzling. I called them back. They very courteously explained to me that they were aware of this but because of a lack of funding, plus a lack of personnel and a lack of time they restricted their activities only to the area of licensed physicians. I can well understand their position because of the numerous health food stores in Oregon, and the numerous clerks working in them. Policing such a situation would be really impossible. I wondered if taking a few cases and investigating them, and prosecuting them might be a deterrent to other clerks who have been prescribing.

I felt totally frustrated, and kept thinking of the little old lady who probably no longer visits her physician for her "pressure". There are no doubt many others out there like her who are not receiving adequate medical care.

Healthology

I first became acquainted with healthology through a friend which I happened to meet one day downtown. I asked him what he was doing these days. He said with pride "well, I'm now a healthologist!" I said "what is that?" He said "well, I took a course in it. And now Im a practicing healthologist. Basically, it is a wonderful way of being able to diagnose any ailment which a person may have, and without the cost and trouble of going to a doctor." I said "how can you diagnose, how is it done?" He said "it is really wonderful, Pat, with just a few simple tests, such as urine testing, saliva testing, and some are skilled in iridology, one can completely check all body systems." I said without any x-rays, no blood tests, no physical exam?" And he smiled and said "that's the great part, isn't it wonderful for the patient to be able to dispense with all of that and all the expense, and besides we

can tell the patient all he needs to know with just about 15 minutes of testing. No waiting to get lab results, etc." At this point he handed me his card, and it had "R. H." after this name I asked him what that meant. He said "Pat, I am a "Registered Healthologist". That means I can legally practice this healthology. I now have a new career, and I'm trying to get my daughter-in-law to take the course. She's interested, and may take it soon." I said "Tell me about the course, Perhaps I would be interested." He said "Pat, it would be a great new career for you since you are having health problems. It wouldn't be hard on you physically. They run courses every few months. The meetings are at the Holiday Inn, and it takes five evenings to complete the course." I said "how much does it cost?" He said "$500.00".

I went home and started to investigate. I called health food stores and told them I was looking for a good healthologists, that I had heard they were wonderful. At every health food store I was given the names of two or three practicing healthologist here in the Rogue Valley. The health food store personnel gave them glowing testimonials and said they were much better than doctors, that they helped you to get well naturally, with natural products, etc. etc. I called several healthologists and discussed what they could do for me if I came to them. I was told that they could "get me off" all hormones which I now take. I asked how food supplements could take the place of hormones. They just repeated that any thing could be treated the healthology way. I started to check. Healthology started in California and was named by a Robert Preston. I have not been able to find out much about him. From there the growth seems to have been involved mostly around Carey Reams. I am submitting exhibits which tell this better than I can. The usual scam of healthology in Southern Oregon is that they land here in Medford, run a five day class at the Holiday Inn. Charging fees ranging from $500–$700 and then leave town. At the end of the five day session the person who took the class can become a "Registered Healthologist" by paying a fee. I researched what this means and found that since they give no grades for the class, and there is no way to measure the students capabilities or performance, that the "R.H." merely means that his name is written down in a book (of registry) in "some town in California". (This is the way it was put to me).

I have talked with several people who go to healthologists and firmly believe in them. These people are of average education, (not hippies as one might expect) and WASPs.

Again I did some checking, and found that the Board of Medical Examiners does not have the resources to do anything about healthology. There is literally absolutely no control, restrictions, or policing of these practitioners. Since they charge for their advice and services, and advertise themselves as professionals and even sport a bogus degree after their names, it would seem that potentially they are an even greater danger to the public than the health food stores clerks.

Dr. Irl Clary, D.D.S., of Lake Oswego, OR

While living in Oregon City from '76–'79 I went to Dr. Clary to have my teeth checked. He told me I had 13 cavities. I knew of one and had him fill that. I told him to hold off on the rest. About a month later I came to Medford to visit my parents and went to my old dentist down here. Dr. Harvard Bresee. Dr. Bresee said he could see one cavity recently filled but could find no other cavities. I decided to go back to Dr. Clary. I made an appointment and went back for a cleaning, I said. He made no mention of all of the cavities I was supposed to have, even though he should have had a record of such in my chart, if indeed he really thought I had really had them. This time while cleaning my teeth (which had been cleaned just the week before in Medford) he asked me why I had several large red pimples on my chin. I told him that I always got them if I forgot to take some of my hormone injections on time. "What, do you take hormones? What kind of hormones?" I told him. "I can get you off of all of those hormones in two weeks." Then he said, contradicting himself, "go home and throw away all of your hormones!" Then he said "come in here and let me do a couple of tests." He led me into a separate examining room and tested my saliva and looked at my eyes with a magnifying glass. He said "AHA, you have a serious inflammation in your lower left bowel, and you have good adrenals (which is not true) and . . . etc. etc." Then he said "Do you take any supplements?" I said "Yes". He said "go home and throw away all of your supplements and then take the ones I can sell you". To make a long story short, it made me furious that he would tell me to throw away my supplements and hormones, which are prescribed by my regularly attending physician. I wanted to complain, but didn't know to whom I should complain. I started calling around. I didn't even know about the Board of Dental Examiners, but eventually ended up talking with them. They asked me to write down my experience and send it to them, which I did. A few

weeks later they called and asked me to be a undercover investigator for them. They said that I was knowledgeable about my own health problems, and not likely to be taken in by him, that since I had a number of health problems that I would be good bait, and that they had had several other complaints about Dr. Clary. They said they thought I could give them good accurate reports and that they would pay all expenses and give me mileage. I agreed to help them. I will submit my complete report to them as an exhibit.

Dr. Raymond Peat, (Ph.D.) of Eugene, OR

I met Dr. Peat at a weight loss clinic on S.E. Hawthorne in Portland. (Exact name of the clinic since forgotten) Dr. Peat was on their Staff and a medical counselor for the obese. Dr. Peat was particularly interested in the fact that I use progesterone. Dr. Peat also said he teaches on the staff at the University of Oregon, in Eugene, and at that time taught at the naturopathic school in S.W. Portland, in the area of endocrinology. Dr. Peat's doctorate is in the field of physiology, as I understand it. I was unable to continue at the weight loss clinic, but several months later I received a note from Dr. Peat in the mail accompanied by a piece of paper rolled up in which I found a brown powder. Dr. Peat said he was experimenting with progesterone granules which he had been able to obtain and would I please test this progesterone by using it myself and reporting to him if it controlled my symptoms.He said to dissolve it in oil and use it under the tongue. I looked at the sample, rolled up in a grubby looking piece of paper. I thought, what is the potency, is it real progesterone, might I get too much because I won't know how much I will be taking? I also thought, if it doesn't work I'll get myself in trouble, and that is not necessary because I have nice little sterile bottles of injectible made by Lilly. I threw away the brown powder and never answered him.

About five years later I decided to write Dr. Peat and ask him how he was coming on his progesterone research. He answered and said he was now selling progesterone by mail and it could be taken under the tongue or absorbed through the skin. He said the progesterone was in a Vitamin E oil base. He also said he was selling a book entitled "Nutrition for Women". I decided to see what was what so ordered his book and a bottle of the progesterone in Vit E oil. The bottle came with no label, no dosage information, no information as to how much Vitamin E was in each CC. The bottle came capped with a screw type cap, so the sterility was doubtful. The bottle sat around my place for several months (Progesterone has a long shelf life at room temperature and should not be refrigerated) and finally, after reading Peat's book, which made no sense to me at all, decided to try the oil. The next month when it was the right time in my cycle to take progesterone, I did not take my injections, but used Peat's stuff under the tongue daily instead. I got absolutely no response at all. Daily my symptoms grew worse, acne, nervousness, cramps, between period spotting, etc. Finally, desperation I had to stop the experiment. I was mad. I had wasted $20.00 for the bottle which to me was worthless and the money was a lot to me. I actually had not expected it to work as well as the Lilly product but would have possibly expected some response. On Peat's note he said he gave phone consultations for $20.00 for 30 minutes. I called the number and asked about an appointment. I was told by his "chemist" that he was out. I asked "do I have to pay $20.00 to ask him about product he sold me that doesn't work. She said that I did. I hung up. I had wasted enough money already, but not a complete waste because I had bought the bottle mostly to find out what he was really selling. So I called the FDA. I complained. They asked me to send them the bottle which I did. They said if it really contained progesterone he was doing it illegally. They reported back to me and said it was Vitamin E oil and did have progesterone in it. They told me how much but I can't remember the figures.

About this time I met a lady who said to me on the phone one day "Have you ever heard of a Dr. Peat?" I said "Yes." She said "he wrote a wonderful article in some health food store magazine, and he sells progesterone in a cream. It is so wonderful, you can get it without going to a doctor and paying for the office call." I said "How did you first find out about it?" She said "I have a sister up in Anchorage, Alaska who has had trouble with miscarriages. Her doctor finally decided she needs progesterone during pregnancy. But she is going to try Dr. Peat's cream." I said "how is she supposed to use the cream?" "She is supposed to rub it on her stomach after her bath when her skin in warm and moist," she said. I said "well, that is very interesting. Is she pregnant again?" "Yes," she answered, "and my sister is so happy not to have to be running to the doctor and prefers this more natural way to get help." I told her to let me know how her sister got along. I waited a few weeks and called her up again to chat and asked about the sister. I was told that she was now about 4 months along and doing OK. I said "I would like to ask her some de-

tails about this progesterone therapy. One always needs to learn. Could you give me her name and address?" she said "well, I probably should ask her permission first." I said, "Okay, well let me know—I'm , really interested in this subject. It is so nice to learn as much as we can about our own bodies." Well, I finally obtained her name and address and wrote her but never got an answer. I called up the lady here and she said her sister was in the middle of moving and was busy, and that after she herself knew her new address she would get it to me. I never did get the second address.

The last step in this story is that I got a letter from the FDA who said that customs had seized a shipment of progesterone that was being imported by Dr. Peat. They said it was largely due to my efforts that this had been accomplished. They thanked me for my help.

Dr. Lynn Anderson and the biosocial medical group of Medford, OR

I went to Dr. Anderson, M.D. in search of help in my diet management. I also have allergies, liver damage, hypoadrenocorticism, etc. I had been told by friends that this outfit was great with special diet management. I did some checking and found that the group had been started by a woman who had a disabled child, retarded due to some kind a metabolic ailment, which, she felt, could have been controlled with the right treatment, thus avoding retardation, which happened when the child was about 2-3. I am very sorry that I no longer remember the woman's name. The Biosocial Medical group advertises itself as a non profit medical group. My first visit cost me $90.00 and about a 45 minute discussion with Dr. Anderson. I received no physical and no tests. Their practice was not limited to just diet management, but I had gone there for that and any other help they might be able to offer. I was upset when I left because I did not think I had received my money's worth. I was scheduled for another test, the cytotoxic allergy test. I told my mother about the upcoming test, about which I knew nothing. My mother then took my 92 year old grandmother in for the same test. They drew 50 cc. of blood which, I was told, was sent to some lab up in Washington state. When the results were in they asked me to come in for another appointment and Dr. Anderson handed me a sheet on which were listed many foods. These were marked with plus 1 or plus 2 or plus 3 or S for slight. She just proceeded to read the paper to me. I have known how to read myself for many years. I could have read to myself by myself. She charged me $35.00 to read the test results to me. The total cost for the test and reading the test was $180.00. My grandmother was also charged the same. Then I researched and obtained from Dr. Jarvis of the California Council Against Health Fraud several copies of articles and research done on the cytotoxic allergy test. It is considered unproven and unreliable, as shown in double blind studies.

I called up the IRS and asked them how it was decided if an organization qualifies to be called a non profit organization. He said they are required to keep books and show a profit or loss statement and that according to what I told him they should be investigated. He asked me to provide him with my canceled checks. I am currently collecting these. I am also searching for other patients who would be willing to do the same, but this is exceedingly difficult, almost impossible, and much care must be taken to find patients who are already dissatisfied. I have not given up on this project but presently it is on the back burner, so to say. At my last visit at the Biosocial Medical Center, Dr. Anderson brought in a bottle of bee pollen and told me to take three pills a day and that it would give me increased energy and might even solve my blood sugar problems. She also sold me thyroid glandular pills, liver glandular pills, and pancreatic glandular pills. She said the theory was that when you ate these pills the tissues in the pills went to my own glands which would absorb the properties and tissues of the pills, thereby enhancing my own glands and building them up. Every appointment ended up in me being sent to a little room where the bookkeeper sat. There I settled up the bill and as I got my check book out another white clad person came in with the pills which I was supposed to buy at the same time. My last feud with this group was over a book they were selling in the waiting room called "hypoglycemia: a better approach" by C. Airola.

The main gist of this book was that if you have hypoglycemia or another blood sugar problem including mild diabetes that the new approach was that it was fine to eat all of the carbohydrates you wanted as long as they were in the starchy food groups, like potatoes, corn, flour, wheat, oats, and that only sugar was bad. Since I learned in nurses training that we have an enzyme, ptyalin, in our saliva, and that as we chew, much of the starch in our mouths is changed to sugar, I questioned this theory. I read the book and found many questionable things in it. I told Dr. Anderson that I knew from my own personal experience that I have severe problems with those starchy foods, especially potatoes, if eaten in any but very small quantities.

She was visibly upset by my challenge. She said there were no exceptions, I decided to challenge her to a test that is more than subjective. I called a doctor in Walla Walla, Washington who had been of great help to me in first diagnosing my problems, presented him with the situation and asked him to suggest how a test like that might be conducted. He suggested that I ask Dr. Anderson to run basically a Glucose Tolerance Test, but have me ingest potatoes instead of glucose. He said to measure the potatoes and have it equal exactly 100 grams of carbohydrates. He said that blood sugars should be taken at fasting, and thereafter at the standing times of 30 minutes, 1 hr, 2 hrs. 3 hrs, 4 hrs, and 5 hrs. I asked Dr. Anderson if she would run such an experiment. She agreed. I came in with my potatoes, all weighed and measured, no salt, fat, milk or anything else added. The test results were fascinating.

Fasting 100, 30 minutes 235, 1 hour 45, 2 hours 65, 3 hours 72, 4 hours 75, 5 hours 82.

The results I had interpreted by the Washington doctor. He said that the rapid rise at 30 minutes showed a pre-diabetic condition but was not a full blown diabetic because it didn't stay up there. He said the sharp drop of almost 200 points in 30 minutes from 30 minutes to one hour and a reactive hypoglycemia fall. It was similar to my test when I had ingested glucose. The gradual rise thereafter was my body gradually recovering from the carbohydrate onslaught which had been hard to tolerate. During the test I had tacchycardia, sweating, tremor, weakness, mental lethargy, and alternately a feeling of anxiety, nervousness, irritability to noises, and at the 1 hr. point could hardly walk into the little room to have my blood tested. My knees were shaking.

I believe that the sale of the book in the lobby, the sale of bee pollen and glandular pills is quackery. I believe the high rates are health fraud. One final note, I had been told that the G.T.T. would be free because it was considered "research". I was then billed right afterwards, before I got out of the door on the day of the test $40.00 for a fee for "drawing the blood". All they did was stick my finger with a pin and put blood on a test strip. Then I was told the blood was being sent off to have the (they did draw one venous sample) insulin level checked. I was also billed for that, amount forgotten. The Biosocial Medical centers treats both adults and children. I think they deserve further investigation on a number of levels.

SUGGESTED RECOMMENDATIONS

1. A need for education, both health education and consumer health education. People need to approach their medical care as a consumer, and become actively involved in knowing what is being done, and why, and for how much.
2. There needs to be legislation covering healthology, herablists, colonics proponents and other such practitioners, iridology and the like.
3. There needs to be enough funds, personnel and interest to prosecute, after investigation, persons who fall under No. 2 above.
4. Physicians need to be taught in medical school to more actively regard senior citizens as potentially healthy people who have ailments which may not necessarily be associated with aging. Physicians need to be more sensitive to the medical problems of the elderly, taking time to explain to them what their treatment entails and what other treatments they should not expect to help, thereby helping some of the elderly to be less likely to seek lay help.
5. There definitely is need some kind of legislation or controls of the publications of untrue, misleading books and periodicals.
6. There needs to be some kind of remedy for the high cost of health care.

CONCLUSION

As a medical consumer and private citizen I have been very concerned, not only for myself, but for these things which affect others. I feel that personally it is not likely that I will be seriously hurt by quackery, but I have had some expenses when doctors had sold me worthless nostrums. Others are probably even more vulnerable than I am.

I respectfully submit this report, and hope that some information in it will be of some help to you. I have never written a report of this type before, and do not know if the style or content is what you wanted. It is my sincere wish that in some way this report will be of some small assistance to you. I thank you for asking me to contribute.

The CHAIRMAN. Dr. Wilson.

STATEMENT OF DR. BENJAMIN R. WILSON, BEAVERTON, OR

Dr. WILSON. Senator Packwood, I'd like to thank you for the privilege to testify before your committee.

I'm a surgery resident at present. I've had an interest over the past many years, actually, in quackery, and I'm a member of the National Council Against Health Fraud.

I was going to bring a book this morning—unfortunately I couldn't get it out of the library—entitled the "Golden Age of Quackery." This was published in 1959. Excellent book. Unfortunately the title is incorrect. We're presently in the golden age of quackery.

Mr. Gordon previously alluded to Congressman Pepper's report from his subcommittee which stated that Americans lose about $10 billion a year to health fraud. I believe that. I suspect it may be higher.

One of the sad things is that if we compare the situation to 70 or 80 years ago, 70 or 80 years ago a person who bought Dr. Beanby's combination oil therapy for cancer probably was just out a few dollars. At that time medical therapy didn't have much to offer the cancer or arthritis patient. Now if the person buys some quack cure he's not only out a few dollars or perhaps a few thousand dollars, but he's also into something that will probably cost him his life.

I'm a little bit intimidated by Mrs. Rohlf's testimony, because she has such excellent presentations. The past few days, however, I've gone out to some health food stores, and I thought I'd just bring a few examples of some things that are presently available. Now, this is within the last 3 or 4 days that I got all this, a perfect example of false advertising, which is readily available anywhere in Portland.

Here's a book "How to Get Well," proven effective solutions to your health problems, whatever they may be. You want to check the solutions—if you have bladder infections you'll find out you're supposed to take catnip enemas. If you have cancer, of course, coffee enemas will take care of that. Heart conditions can be cured by alternately dipping your elbow in a basin of water that's cool and a basin of water that's warm. Complete nonsense, but people are willing to pay $10 thinking they're onto something really good. Obviously, fraudulent advertising.

False claims. If a manufacturer who is selling vitamins puts on the label this will cure cancer or this will cure heart disease they will be in trouble. However, the same manufacturer can make up an advertising sheet. These I got 2 days ago with natural remedies for menopause, how to keep your heart alive, easy weight control, butcher's broom sweeps away circulation problems. These are given away free in various stores. There's all fraudulent, and yet they're advertising. They have no more validity than if a service station was selling a component you could install on your car that would get you 200 miles per gallon. There's just nothing like that that works.

An example of things coming through the mails. This goes back about a year-and-a-half ago. I really received this solicitation to buy blue-green manna. This came from a gentleman in North Caro-

lina. It'a a wonderful substance as you might suspect from the term "manna." It reduces fears, wipes away all forms of stress, eliminates leukemia, heals ulcers, eliminates seizures, strops the usual craving for sugar and alcohol, stops snoring, and cures persistent hiccups.

Now, I was a bit skeptical of these claims, and I wrote a letter to the U.S. Postal Inspector a year-and-a-half ago. I still haven't received any answer to my letter.

Incidentally, in this same newsletter, if you're interested, Senator, there's an advertisement for a wonderful assault shotgun, the street sweeper.

Probably the best example that the laws we have and the way the justice system is working is inadequate was 2 weeks ago here in Portland. There was a gentleman from Illinois who came into town and proclaimed that he would cure arthritis, cancer, and multiple sclerosis, and to quote from his lecture, which I have a videotape of——

The CHAIRMAN. Let me ask you what was his method of advertising that he was coming into town? How did people know he was coming?

Dr. WILSON. Well, there were several methods that were done. No. 1, health food stores. No. 2, his press agent contacted all the local radio and television stations and tried to arrange for appearances on the local TV talk shows. Now, a year-and-a-half ago he wound up on A.M. Northwest billed as a research scientist with great credentials. This year apparently when he tried to come on they told him that he didn't have any credibility; however, he did get on two radio stations. I've got his complete press release packet, too, which makes him out to be a great man of science.

One of his statements at the public presentation at the Memorial Coliseum was "there is no reason for anybody who has cancer or arthritis or multiple sclerosis to worry anymore, because it is a completely reversible series of diseases." Now, that translates into this: First of all, you have to send his metabolic research foundation $200. This will get you a referral to a local coconspirator, as I call them, and the next step is you spend $6,800 to go to either the Manner Memorial Hospital in the Bahamas or the Manner Clinic in Tijuana for 3 weeks.

Now, he assured the audience that this was so well received by the medical insurance companies that it was completely covered in whole by Blue Cross and Prudential. Of course that's not true. One hint from some of his literature was that you're supposed to bring your money with you in the forms of a traveler's check or cash.

Once you got back from that that wasn't the end of your treatment. There were untold hundreds of dollars to spend in nutritional supplements which you would buy from either Midwest Nutritional or Southwest Nutritional. He didn't mention that both of these companies were owned by members of his immediate family.

This scam has been going on 6 years. It was the subject of an expose on channel 2 in Chicago 2 years ago which covered nine episodes.

The CHAIRMAN. Let me ask you who has tried to stop it? Why doesn't it get stopped?

Dr. WILSON. There's been a Federal grand jury investigation which I understand is still going on. There was a State grand jury investigation in Illinois. What this gentleman has done is he has positioned himself so he avoids the charge that he's practicing medicine without a license.

Now, quite frankly, I think the Federal Trade Commission could have nailed him a long time ago with all the claims he's making which are fraudulent, but it hasn't been done.

Instead of being imprisioned, he's testified in several trials urging judges to remove children from chemotherapy. Two cases that come to mind, Chad Green—you may recall several years ago a kid who wound up in Tijuana and died from leukemia. That was his clinic. Chad Green had a curable cancer that we're getting an 80-percent cure rate on. Joseph Hoffbriar, a kid with a 95-percent cure rate, wound up at his clinic and also died. If things were right Dr. Manner would be imprisoned for these, and he's not. He's free to come into this State and tell people I've cured every case of brain cancer in the children that have come along. People who come to me—we're sending 72 percent of people home without their cancer, and these are people who have been declared terminally ill. He's able to get on the media and have these things go unchallenged.

I could come up with many more examples. I found Mrs. Rohlf's presentation very interesting, because some of the techniques she was describing I could put the name on them and tell you the big promoter throughout the country.

What has to be done is, No. 1, the FDA has got to start enforcing the fraud laws involving food supplements. Their budget last year was $1.8 million. In the last 2 years they've brought one criminal case. I could take you out today, and we could probably find 50 examples of fraud involving misbranding of food supplements.

We need a task force comprised of the FTC, the FDA, the Postal Service, and the Justice Department who adapt a aggressive position against health quackery and attack it much like they would go after some other big fraudulent thing.

There's some other things that could be done. A national clearing house on unproven remedies. One other thing I might mention is health financing organizations should be allowed to sue people who practice quackery medicine if their subscribers are hurt by it. Presently that's not available.

The CHAIRMAN. Yor mean Blue Cross ought to be allowed to sue or——

Dr. WILSON. Right, right. You know, if they are expected to cover the expenses of a child who was inappropriately treated for meningitis, then they should also be allowed to sue the perpetrator of this type of treatment.

In closing, I think the thing that is really sad about all this is that if I decided I wanted to become a con artist and make a fast buck, I would find out I would have much more trouble if I opened up—put a sign out in front of my house or office and said I've got a device that gets 500 miles per gallon for your car, it only costs $15.95, and if I advertised it in the Oregonian—I think Mr. Frohnmayer would be on my case pretty quick. If, however, I said I'm Dr. Wilson, if I wrote a book and sold it in health food stores and said I

have the cure for cancer, I can cure brain cancers by applying my salve on your scalp, I could go on TV shows, and in many areas I would be held as a hero, and I could function much longer that way. The ramifications of some quack trying to treat brain cancer as opposed to someone trying to swindle the public of 200-mile-per-gallon device——

The CHAIRMAN. You know, you mentioned that 200-miles-per-gallon device. That particular scam, although I'm sure 100 different peoples must be involved in it and are totally unrelated to each other and it extends over a long period of time, results in a continual trickle of letters to my office from people who are convinced by the advertisements and believe the reason that that device is not on the market is that the oil companies have bought up the patents to stop it. The fact that General Motors or Chrysler would love to have the device and put it on their cars—they're not in the oil business, they're in the car business—is of no moment. You try to answer the questions, and the people are convinced that the device exists. It is so prevalent that a number of years ago—I have not checked recently—I could call the Library of Congress and say please send me the treatise you have put together on this particular scam. They had run down an half dozen of these claims and explained why they didn't work scientifically. The treatise was 30 or 40 pages in length, and I would mail it out to the people.

But, people to this day believe those gadgets exist and that they are being suppressed. They argue we would just let the people who advertise them participate freely in the market they would be sold and the oil companies would be out of business.

Dr. WILSON. Well, it's interesting you mention that explanation people have about the oil companies trying to suppress. There's the same explanation that the medical establishment is trying to suppress the cure for cancer, because if we suppress the cure for cancer—you know, if the real cure came out, then there would go all our profits, and that's absurd, you know. They must think that members of the medical professions have loved ones that are dying of cancer, and yet people will buy this argument.

The CHAIRMAN. Dr. Reardon.

STATEMENT OF DR. THOMAS C. REARDON, PRESIDENT, OREGON MEDICAL ASSOCIATION

Dr. REARDON. Thank you, Senator Packwood. It is truly an honor and a privilege for me to be here today to present perhaps my perspectives on quackery and health care fraud. I think there have been examples given to you already concerning health care fraud, and I would like to approach this as an overview from my perspectives and the association's perspectives.

As you may know, Oregon is quite familiar with the quack attack as it has been used by the manipulators of the media to describe one of our university athletic teams, and therefore, it will probably draw some smiles from many Oregonians; however in today's discussion it takes on quite a different connotation.

Health care fraud is anything but funny. It usually involves a victim who is usually, for a number of reasons, very vulnerable. The victim is likely to be elderly, desperately ill from either a ter-

minal illness or perhaps a chronic, debilitating illness. They face a painful and uncertain future because of this chronic, debilitating disease, and for this reason they are oftentimes ready to grasp at anything, any remedy that's available to relieve their discomfort or even to survive.

Significantly, there is very little fraud associated with communicable diseases such as infectious diseases for we have in our armamentarium in this area innumerable antiobiotics——

The CHAIRMAN. Slow down and say that again. Tilt the microphone up a bit because that was an important point you made about the infectious diseases.

Dr. REARDON. I say significantly there is very little fraud associated with the treatment of communicable diseases or infectious disease, because in our armamentarium we have innumerable antibiotics and our antiviral agents are coming. We have immunizations. We have vaccinations, and the quacks just can't compete in that area.

The diseases which they target are the ones which are the most frustrating ones to medicine. That includes arthritis, cancer, obesity, arteriosclerosis, multiple sclerosis, most of which it takes a long time to develop. They have to with the environment, lifestyle, and absolutely no disease can be wiped out with "the magic bullet," which I think the quacks would like us to believe.

I would not take your time to discuss the statistic of health fraud or prognosticate what can be done, but I would like to take the time I have to share with you my experience from three perspectives; one is personal, one relates to my medical practice, and the other is involved in organized medicine.

My personal experience is testimony to the fact that my father developed cancer when I was in medical school, a sophomore. He was operated on, termed to be inoperable and terminal, eventually died when I was just a senior in medical school. It was only after his death that I found that he had spent a considerable amount of his resources on Krebiozen, a drug at that time, which is an amino acid compound, highly touted to cure cancer. This was a rather desperate action, and he spent resources which he really could not afford, and this he could not really share with me, his medical student son.

As a physician, my experience has been that health care fraud victimizes patients in a number of ways. They may be misdiagnosed as has been told to you here already. These are patients who may be taking vitamins, other treatments, and then they appear in my office or in another physician's office weeks or months later either terminally ill or inoperable. They may know of their diagnosis. They may dread the disease. They may dread the pain and suffering that they may have to go through. Patients here in Oregon are currently undergoing chelation therapy for arteriosclerosis when the most effective course of treatment would be perhaps a change in diet, a change in lifestyle, and/or perhaps surgery for coronary—or coronary artery surgery.

I would share with you an experience where they may cause damage where none existed. A distant relative of mine recently had some manipulative treatments for "cardiac palpitations, heart irregularity, and nervousness." As a result of these manipulations,

she experienced rather severe pain in her cervical spine. X rays demonstrated a compression fracture. Unfortunately this woman is a ballet dancer with the Pittsburgh Ballet, and of course she is concerned that her future may be jeopardized at this point.

The most devastating damage is given those who have false hope. They buy expensive gadgetry. Electronic gadgetry is available supposedly to help relieve the pain of arthritis. They travel long distance. They spend vast amounts of money in the pursuit of a cure for cancer. Not only are they left with the medical consequences of their untreated or misdiagnosed or mistreated disease, but they also have to suffer the economic consequences as well.

I recently participated in a town hall forum here in Portland which highlighted, to my mind, one of the cruelest forms of health care quackery or fraud, and that is the so-called faith healer whom victims pay considerable amounts of money to for prayers and then blames the patient's lack of faith or perhaps is nonacceptance of God as the reason for not being cured.

The CHAIRMAN. It's a self-fulfilling prophesy. There's no way you can prove it.

Dr. REARDON. That's right.

The CHAIRMAN. If you don't get cured, you don't have enough faith.

Dr. REARDON. The problem with this, of course, is that although the debilitation and pain is bad enough, to couple this with a feeling of rejection of faith and spiritual rejection is really a tragic way for these peole to eventually die.

Beyond the experience of my own practice, I also happen to be involved in organized medicine here in Oregon, and the Oregon Medical Association becomes a repository for these complaints. You've heard of innumerable complaints this morning from other people. We have these also. I can give you an example of a lady who called recently from the Oregon coast who just spent $4,000 on a megavitamin diet. As you might expect, she finished this course of treatment really not improved and perhaps worse. The unfortunate part of this is this practitioner is not a physician, and we can do nothing more than give her some sympathy and perhaps refer her on to the approprite licensing board here in the State.

Occasionally health care quackery hides behind the respectability of a medical license, however, and I point out to you the fact that I used a moment ago or the example of the Krebiozen back in the 1960's where a Chicago physician was touting this to be a cure for cancer.

Currently the Medical Association is embroiled in a controversy over the safety and usefulness of EDTA which is chelation therapy. This is touted to remove harmful deposits of calcium and fat from the walls of the patient's arteries. There are very many—there are many enthusiastic patients here in Oregon who will use this therapy, and I would point out that this is $50 to $90 per weekly treatment.

OMA's involvement came about at the request of the State Board of Medical Examiners who asked that we review this, and we used our medical review committee and their technical expertise. After a rather exhaustive review of the literature, consultation with the medical school of cardiologists, the committee concluded that chela-

tion therapy had no place, that it was ineffectively and potentially dangerous.

I would point out to you, however, at the recent meeting of the State Board of Medical Examiners there were throngs of supporters who came in to tout their use of EDTA and that it had helped. The chairman of our medical review committee was one of the lone dissenters.

I guess I can explain this phenomena by the placebo principle. Most of us here are familiar with placebos. There was a clinical trial a few years ago of a surgical procedure promoted as a solution to cure the pain of anginal pectoris, and this ligation of the internal mammary artery which is an artery just under the sternum or the breast bone. This had some popularity a few years ago, and there was a double blind study done. Half of the patients underwent this surgery, the artery was ligated; half of the patients did not have the artery ligated. There was absolutely no difference in the outcome. They all had relief from their pain.

Using the same perspectives, I would like—I guess I can counsel my colleagues that there are a number of things that we can do to help fight against health care fraud. On a personal level we can all educate ourselves better—that is, physicians. We can be careful not to use procedures or remedies that appear just too easy or are new on the market. I think they need to have considerable study and research by not only the drug companies but by our medical institutions—our medical universities.

As individual physicians, we have to practice better medicine, not only practicing better medicine but listen more carefully to our patients and give those patients the assurance and support that they need through these terminal illnesses, so that they don't seek help outside of the established health care system out of desperation.

On an organized basis, we can do no more than continue to search out and identify the unscrupulous or ill-informed members of our own profession. We have several means at our disposal. We have an ethics committee with the organization. We have peer review and our medical review committee within the organization. We have hospital medical staff peer reviews.

When these individuals are found or identified they can be turned to the State Board of Medical Examiners. I can assure the State Board is very aggresive in pursuing these sort of complaints.

I guess as a further and more difficult undertaking we need to educate consumers of health care not just on a patient-to-patient basis but in schools, communities, and using the media. This is an obligation that I think everyone of us can share, and I think that meetings such as this, which brings the matters to the public's attention, are certainly a responsible step in the right direction.

I thank you for allowing us to give our perspective today, and I appreciate your interest in this.

[The statement follows:]

STATEMENT OF THOMAS R. REARDON, M.D., PRESIDENT, OREGON MEDICAL ASSOCIATION

Senator Packwood and esteemed members of the committee, it is an honor to be asked to appear before you today and share with you the Oregon Medical Association's perspectives on quackery and health fraud. Portland is indeed privileged to

host the Senate Committee on Commerce, Science and Transportation, and we are gratified at the interest you are demonstrating regarding this important issue.

Senator Packwood is of course familiar with the term "quack attack" as it applies to the University of Oregon Ducks' athletic teams.

In the context of today's hearing, however, it takes on quite a different interpretation. Some health care quackery, like the three-page typewritten publication on "How I Cured Myself and My Dog From Arthritis"—available by mail for only $5.00—evokes laughter. But most health care fraud is anything but funny—it always involves a victim, who is usually, for a number of reasons, particularly vulnerable. The victim is likely to be elderly, desperately ill from a terminal disease, or facing a painful and uncertain future because of a chronic debilitating disease. Because of this unique vulnerability, the patient is ready to accept virtually any remedy, regardless of the cost or even the discomfort associated with it, that promises a measure of relief.

Significantly, there is very little fraud associated with the treatment of communicable diseases. Because we have proven remedies for most infectious diseases, the "quacks" just can't compete. The diseases which they do target are those that frustrate medical doctors—and their patients—the most . . . arthritis, cancer, obesity, atherosclerosis, multiple sclerosis—most of which took a lifetime to develop, many of which can be attributed to lifestyle and environmental causes, and absolutely none of which can be wiped out by a "magic cure."

I won't take your time today discussing the magnitude of the problem or even suggesting what the various federal agencies could or should do to curtail it. I would like to spend the short time I have with you sharing my own experience from three perspectives: one is personal; one is related to my practice as a physician; and the other concerns my involvement in organized medicine.

My personal experience is testimony to the fact that few of our lives are untouched by health quackery. When I was a medical student, my father was suffering from terminal cancer. It was not until after his death that I discovered that he had spent thousands of dollars seeking a cure by taking Krebiozen, an amino acid compound that was initially touted as a cancer cure by a physician from the University of Chicago. This was a course of desperate action, that he could not share with his medical student son.

As a practicing physician, my experience has been that health care fraud victimizes patients in a number of different ways. They may be misdiagnosed, as in the patient who is treated for a vitamin deficiency and shows up in my office months or years later with inoperable cancer.

They may know of their diagnosis, deny or dread the prognosis, and seek an alternative "easier" course, as in the patient who undergoes chelation therapy for atherosclerosis, when the most efficacious course of treatment might involve dietary and lifestyle changes, a carefully selected regimen of medications, or even surgery.

They may experience damage where none existed before, like the young woman who recently appeared in my office after undergoing a series of manipulative treatments to relieve her "nervousness" and heart palpitations. She was in considerable pain, and I discovered a fractured cervical vertebra, apparently as a result of the treatments. Unfortunately, this women is a ballet dancer, and her career may now be jeopardized.

Often, however, the most devastating damage is done to the person who is given false hope, as in the patient who purchases expensive electronic gadgetry to relieve the crippling pain of arthritis, or who travels long distances in pursuit of a cure for cancer. These patients are left not only with the medical consequences of their untreated or mistreated conditions, they must also deal with the economic consequences as well. This does not take into account the emotional letdown when their hopes are not realized.

I recently participated in a Town Hall discussion of the role of personal faith in health care. Religion and personal faith have a place in healing, which physicians have seen time and again. But in my mind, the cruelest form of victimization—a so-called "faith healer" who accepts large sums of money in exchange for his prayers, and then blames the patient's lack of faith, or even "lack of acceptance by God" for the failure to cure. Ending your life in debilitation and pain is bad enough—to couple this with a feeling of personal failure and spiritual rejection is tragic.

Beyond the experience of my own practice, I am also fortunate to be one of the leaders in organized medicine in Oregon. The Oregon Medical Association offices become the repository for numerous consumer complaints involving health care fraud—like the elderly woman who wrote to us seeking redress for the $4,000 she had just spent at a so-called "natural healing" clinic on the Oregon coast. As you might expect, she finished her course of treatment in worse condition than when

she started. Because the practitioner involved was not a medical doctor, we were only able to offer her sympathy and refer her to the appropriate licensing board.

Members of the public also use OMA as a sounding board: an organization claiming to offer comprehensive allergy testing and treatment recently passed through town. They advertised their services widely in the media and encouraged sufferers to show up at a local motel, where they would be seen by a "doctor." Dozens of callers sought to verify these claims through the OMA, and we confirmed that this "fly-by-night" group was not affiliated with the legitimate medical community. Indeed, the "doctor" that they advertised was not even an MD.

Occasionally, however, health care quackery hides behind the respectability of a medical license. The Chicago physician who promoted Krebiozen is a historical example, but we don't have to look into history to find examples in Oregon. We, too, have had our share of physicians who attempt quick and easy solutions to difficult problems by using mysterious black boxes, inappropriate prescriptions for controlled drugs or unproven remedies.

The association is currently embroiled in a controversy over the safety and usefulness of E.D.T.A. chelation therapy—a treatment which purports to relieve atherosclerosis by removing harmful deposits of calcium from the patient's arteries. There is no lack of enthusiastic patients who claim to have benefited from chelation therapy (at $50–90 per weekly treatment) and there are only a handful Oregon physicians who appear to genuinely believe in its effectiveness. We also have a growing number of non-physician practitioners who have climbed on the bandwagon by administering an agent with supposedly the same properties by mouth.

OMA became involved in this issue at the request of the State Board of Medical Examiners, which frequently utilizes the technical counsel of our Medical Review Committee. After an exhaustive review of the literature and consultation with national experts, our committee concluded that "chelation therapy with E.D.T.A. is inefficacious and potentially dangerous." Significantly, however, at a recent public hearing held by the Board of Examiners, supporters of chelation therapy massed to give their doubtlessly sincere testimonials. The chairman of OMA's Medical Review Committee was one of the lone dissenters.

As a physician, I can only explain this phenomena by the placebo principle. Most of us are familiar with placebo medications, but one of the best examples of the power of suggestion came about after a clinical trial of a surgical procedure promoted as a solution to the pain of angina-internal mammary ligation. This procedure enjoyed a flurry of popularity several years ago, until its effectiveness was measured in a blind study. Each patient in the study underwent surgery; half of them had their mammary arteries tied off and half were simply sown up after the initial incision. There was absolutely no difference in outcome. All of the patients experienced relief from pain.

Using the same three perspectives, I can counsel my colleagues that there are a number of things that we can do to assist in the fight against health care fraud.

On a personal level, we can all better educate ourselves about quackery, and most of all, we must learn to question any procedure or remedy that appears simply "too good to be true."

As individual physicians, the answers lie in a couple of directions. Not only do we have to practice good medicine, we need to listen to our patients more carefully—especially those who may be potential victims of health care fraud—and try to provide them with the assurance and support that they often seek, in desperation, outside the established health care system.

On an organized basis, medicine can do no more than continue to search out the unscrupulous and ill-informed members of our own profession, utilizing every means at our disposal. We have a number of effective tools: professional association ethics and review committees, hospital medical staffs' review bodies and, in some cases, referral to the state licensing board.

I can speak with confidence, that Oregon's Board of Medical Examiners acts in a vigorous and aggressive fashion when faced with a complaint of fraudulent practice. The OMA's Medical Review Committee, Ethics Committee and Board of Censors have referred cases to the disciplinary board, rebuked members and even expelled members who exhibit unprofessional conduct.

But as a further and even more difficult undertaking, we need to educate consumers of medical care—not just on a physician to patient basis, but in our schools, in community forums and using the media. That is an obligation that all of us can assume. Meetings like this one, which bring such matters to the public's attention, are certainly a responsible step in the right direction. I thank you for giving us the opportunity to contribute.

The CHAIRMAN. Thank you. Dr. Kime.

STATEMENT OF ROBERT KIME, PH.D., PROFESSOR, DEPARTMENT OF SCHOOL AND COMMUNITY HEALTH, UNIVERSITY OF OREGON

Dr. KIME. Thank you, Senator Packwood. It is, indeed, a privilege to be here this morning. It's interesting. I approach it from a different perspective. I'm a professor at the University of Oregon and bound up in that educational controversy that we're talking about.

In research for a first book that I wrote was called "Health, a Consumer's Dilemma," I found that there were about six factors that caused people to become susceptible to quackery, and I'm referring specifically in the health area; ignorance, psychological proneness, which is broken down into superstition, a desire to be acceptable, and fear, and then, lastly, the cost of medical services. One thing I have to say is that these things are inextricably bound together. The problem with research in this is we can't isolate fear, because fear will be tied to any number of other factors, possibly cost, possibly ignorance. When I say "ignorance" I'm not meaning a lack of formal education. I mean just a lack of knowledge in a particular area.

We find people are prompted to go to quacks—as James Harvey Young calls it "the miss no bets group."

The CHAIRMAN. The what?

Dr. KIME. "The miss no bets." You know, so what, I pay him 50 bucks for this, and at least it might work. If it doesn't, then I'll go back to my physician, and that's a very prominent part of this. They just don't want to miss out.

The problem in the State of Oregon is quite simply about medical quackery, and Pat Rohlf has identified it. There's no place to go to.

I received a letter from Mrs. Rohlf through a friend of mine who is president of the California Council against Health Fraud who is a former doctoral student of mine who is very successful in combating quackery down in California. When I got Mrs. Rohlf's letter I called the Attorney General's office and I was referred to the Board of Medical Examiners who then, indeed, informed me that they couldn't worry about healthologists—was the particular topic—down in the Medford area, because they had enough problems with physicians. Deal with your local county district attorney's office. So, we called there and we found out the positions had been wiped out because of lack of funds. So, in essence, the problem becomes quite simple. We don't have any place to go or any place where people then can funnel in their problems and, indeed, possibly be the central point where we can get information back out to them.

Specifically, in Oregon I could cite a number of things, but probably the most prominent one has already been mentioned a number of times is nutrition. We find these health food stores are promulgating the sale of their particular vitamins.

Nutrition is a young science, and Dr. Reardon mentioned a point, and I think I can just add to this. Quackery reins supreme where scientific evidence is incomplete, and all you need to do is go and take a look at the literature that's available on nutrition. You can find Adele Davis who was a biochemist who has been responsible

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for a number of deaths of people for following her particular philosophy. Linus Pauling, a tremendously brilliant man who purports that vitamin C is going to be a cure-all everything.

The CHAIRMAN. At least for the common cold, as I recall.

Dr. KIME. Yes

The CHAIRMAN. Didn't he write a book specifically on that?

Dr. KIME. Right, on the cold. Right.

The CHAIRMAN. And there's no objective medical evidence to justify it?

Dr. KIME. None whatsoever at this point in time. Also, cancer, right.

But, in nutrition you can just—you see it here. Dansback University—that's down in California—you can get a B.S., an M.S., or Ph.D. degree in nutrition. In 1984 they found that Kurt Dansback, who claimed to have a master's degree in molecular biology and a Ph.D. in nutrition science, had neither degree, but yet his college was giving these degrees.

Now, how does that affect the State of Oregon? Down in Roseburg we had a Northwest Longevity Center located in the Family Fair Vitamin Shop. The director was Darrel Ochs, o-c-h-s. He was stated as finishing his Ph.D. degree. Well, where was his Ph.D. degree? Dansback, and he still hadn't finished that when I was checking on this and found out that, indeed, he had left Roseburg, but he's in Bend right now, and he's apparently—they say he's a victim of hard times. He can't——

The CHAIRMAN. What's his name? Ochs?

Dr. KIME. Ochs, o-c-h-s. And he purported to be getting a degree from Dansback University.

Degree mills all over the United States. The Dip scam, the one the FBI is so vigorously after right now. They found a man practicing medicine in Orange County, CA He was holding cancer clinics and giving breast and cervical exams. He said he was—which were predisposed to cancer. He took one woman to Mexico for $30,000. He had purchased his medical degree at a degree mill.

The arrest at Grants Pass just recently—I'm not sure whether you're aware of that or not. It was a place called Alumni Arts. Here they offered reproductions of diplomas from 122 schools, and I quote—they say—"since many schools will not disclose an individual's status, we do not verify orders; therefore, we rely solely on the information supplied by our clients." Well, the FBI agents purchased four degrees from a masters of business from the University of North Carolina to a Ph.D. in business from the University of Pennsylvania, all from this Grants Pass operation.

There seems to be some degree of joining in our deception. As I say, those things are all inextricably bound together, but I'd just like to cite in conclusion again about this problem in nutrition was a clinic. A nutritionist came Eugene—and this was reported in the Eugene Register Guard on September 8, 1984—and at this Bio Health Center from Huntington Beach and Costa Mesa, CA, set up an examination for elderly patients, primarily, so that they could have their blood analyzed to find out if there was incompatibility or blood allergies. The idea was to take 187 common foods and mix them with the patient's blood, and if, then, indeed, they got a reaction, then they'd say you should not eat that kind of food and

therefore your problems would clear up. They were getting paid or there were 20 people at this particular meeting and they charged $350 for this, and by their own evidence, they stated that they visit 24 cities per month.

Now, if you have 15 people there at these 24 meetings, your low end is going to be $126,000 a month, and if there are 20 people there you're going to make $168,000 a month. So, what they're doing—and it has been proven that this is absolutely no good at all. No good at all.

I think the final line comes back—and I would like to conclude on this, and I apologize to our Governor, but I still think he needs to take notice of what he has done, and I understand possibly the timing was bad there. But, on August 8, 1983, a letter to Norma Paulus stated that he is returning Senate bill 582 unsigned and disapproved. Senate bill 582 would have established licensing standards and procedures for dieticians and nutritionists, and had that happened, we could possibly quit foisting off health food store owners as nutritionists if we could put them through a licensing board.

I say the timing was bad. It came at a time when people were complaining we've got to much Government. We've got too many different licenses, and things like this, but to—I think the field of nutrition is just so overrun with quackery that we just have to do something, and this would have been a step in the right direction. The legislature seemed to indicate that that was the case, but it was vetoed.

The CHAIRMAN. I'm glad you said—I think it was Dr. Wilson—that intelligence doesn't necessarily mean just academic training. I started college at Cal Tech and Linus Pauling was my chemisty teacher there. Although he had not yet won his first Nobel Prize, he was still well known in the chemical community, and Cal Tech required all of their teachers, their great teachers to still teach a freshman course, and he was positively a brilliant teacher. I can understand why it it would be very easy to believe somebody with those credentials when he writes a book and says the medical profession is all wet and vitamin C will cure the common cold.

Let me ask you all this question, because I'm not sure I've got an answer. First, it is not the function of Government—I don't care if it's Federal or local—to interfere with capitalistic acts between consenting adults. So long as both parties know what they're doing and they're both well informed and can both protect themselves, they don't need Government protection. If the local businessman or woman in this town decides that they want to ship their goods across the country, they can select between a couple railroads and half a dozen trucking companies or more than half a dozen trucking companies and plenty of airlines, and they can probably make a pretty inteligent decision as to how they want to ship and they don't need much help from the Government. But, where you've got disparate bargaining power—even the common law stepped in. We wouldn't let, under the common law, children make contracts. We just assumed that they didn't have the capacity to make them. We would also void contracts where they were made between two parties where one had such disparate bargaining power that it could not have been a contract fairly arrived at.

There's got to be a way for the Government or the Government in partnership with some parts of private enterprise to protect people from the kinds of things that happen, but for the life of me, I can't quite figure out exactly what it is we can do.

In terms of crime, if there's an equivalent, you don't put the FBI in charge of every burglary in this country, or you would have a national police force of extraordinary portions, nor, I guess, do you put the Food and Drug Administration nor the Federal Trade Commission in charge of every single quack who opens up a health food store on Second and Oak and it's closed a month later and they've moved some place else.

But, how do we put together Federal, State, local, private medical associations, Gray Panthers, universities—how do we put together a unit or a coordinated effort that can stop this? I don't know if I've got the answer.

Let's start with Mr. Gordon. What do we do?

Mr. GORDON. Well, you make reference to the legal aspects having to do with two consenting adults. Now, if the action or the transaction between two consenting adults affects only those two individuals, that's one thing. However, when you're dealing with these kinds of things what happens is that society as a whole is impacted not only in terns of cost but in terms of tragedy, in terms of innocent lives lost. So——

The CHAIRMAN. I'm not even on a one-to-one basis, really, counting these as consenting adults, because you've got somebody who's a con man taking advantage of somebody who is not in a similar bargaining position, and they're frightened to death, and they don't know what to do.

Mr. GORDON. I understand, but if the effect of what happens in terms of someone who is gullible, if it affects only that individual alone, what you see in those kinds of situations—I want to reiterate what I already said. It is a societal concern by virtue of the fact that dozens of people, the society as a whole, and so on, are affected because of the economic impact of these kinds of things. For example, $10 billion taken away from these individuals affects society as a whole, because as a result of that, they can become paupers. They become charges of the State. They have to—they become indigent, and so on. Therefore, it's not just a question of free enterprise. People are just—open by the free market, a notion that we have. There is no such thing anymore as a completely free market. There all kinds of controls. That's why you have an FDA and a FTC and why the post office has special agencies, but the problem is—I'll give you one example.

One individual mentioned in here took in $13 million in 10 months by virtue of the claims that he made and he was selling, and so on and so forth. Now, he was given a fine of $5,000 and, I think, supposedly a 6-month sentence. Now, for anybody who can earn $13 million, $5,000 is less than peanuts. So, I think that one of the things that needs to happen is that there needs to be stricter enforcement, because many of these people are repeaters. They go from State to State, and so on and so forth. The judicial system does not pick up—because most of these are not even treated on a criminal basis. They're treated on a civil basis. This was pointed out very adequately, I think, in here, so that those are some of the

areas that need to be—and I think if the Federal Government would really be serious about it and organize a genuine task force with all kinds of connections, and so on, especially with the States' attorney generals, in my opinion, we would probably begin to make some dent in this problem.

The CHAIRMAN. You really think the Federal Government and the attorney generals alone could make a significant dent in these—that's what I'm curious about. There's got to be some other element. I come back again to the analogy of burglaries and street robberies. For all of the police forces we've got in this country and the FBI and the Secret Service and everybody else, we've not been very successful in stopping it.

Mr. GORDON. Well, of course, I had suggested initially that with that kind of initiative on the part of Government there should be created—a task force should not be just in terms of—to be concerned only in terms of their own responsibility but to help to organize within the communities through existing networks we already have. For example, in my own experience in the aging network, we have a lot of ways of reaching people and of being concerned about their problems, and it seems to me that in an area like this it ought to be much broader than just the older people looking after their peers.

Dr. KIME. Senator Packwood?

The CHAIRMAN. Yes.

Dr. KIME. I think the prototype has been established of something—how it could work. Down in Los Angles County, John Miner was a medical legal officer for many years, and he was trained in medicine and law. He was in the country district attorney's office.

I think the networking that could happen and work and function well in Oregon would be someone who had the designated position in the attorney general office, not just the rest of them, but somebody who had the taking of complaints and dissemination of information working with the networks of the county district attorneys' offices, but the key is money. I mean that's where the Federal Government would have to come, so that we don't have that position eliminated in a cutback period of time when we've having our economic problems.

The CHAIRMAN. That's a very valid point. You're not talking about the Federal Government trying to enforce it. You're talking about the Federal Government helping finance it.

Dr. KIME. Help finance it.

The CHAIRMAN. Despite the fact that we're almost 250 million people, we really are a big nation of small neighborhoods, and to the extent you're got networks that exist, the word can be passed in 100 different ways that are not law enforcement in the normal sense you and I mean law enforcement, but the message gets out.

Dr. KIME. That's right. And I found in Lane County, for instance, they don't get complaints about the quackery, and so forth, simply because that people have exhausted—you know, running against the brick wall. They just don't complain anymore because there's no place to go, and I think the Federal Government—and I don't mean to say that we don't need the Food and Drug Administration or the FTC. We do need those agencies. We need the Attorney General, and we need somebody working in every county.

The CHAIRMAN. Well, you especially need them when really you're talking about organized fraud going from State to State and fraudulent advertising and violations of the Food and Drug Administration. Those are genuine crimes that you prosecute, and, as Mr. Gordon said, if you catch them you don't fine them $5,000. You put away for 5 or 10 years. That is different than the situation where somebody, before paying $300 to go to a cancer cure discussion for the weekend, calls their neighbor and says do you know anything about this or calls their local city council person or calls somebody in the sheriff's office, and, indeed, somebody says I would advise—it's not my position to tell you yes or no as to what you can do, but let me give you some experience we've heard of and you might talk with these people.

Dr. KIME. Well, the better business bureau was mentioned, but Portland is the only one that has a better business bureau. The chamber of commerce in Eugene functions this way, but, again, that's not their major reason for being there.

The CHAIRMAN. Other comments?

Dr. WILSON. Well, what I was thinking about when we were mentioning the networking organization—I'm a member of the same organization that Dr. Kime is. It's called the National Council Against Health Fraud now.

Dr. KIME. Yes.

Dr. WILSON. It expanded beyond California, and I was just thinking of some of my own activities where I've been in contact with people in Chicago, Washington, DC, Pittsburgh, Kansas City, Los Angeles, all within the last couple of weeks over some of these matters. This is a strictly voluntary group, and we just each have an interest in trying to get the—trying to find out exactly what's happening and what movement is going on.

I think, again, if we had a national clearing house, an organization made up of both public and private groups where we could dispense this information. No. 1, we could have, let's say, a toll free number, so if someone is wondering if they should—what's the scoop on blue-green manna, they could call the organization. The organization could say blue-green manna was originated by so-and-so in Iowa. They make the following claims. There's is absolutely zero evidence that these claims are correct. Their estimated sales during 1983 was $4.7 million. We have 73 complaints against them right now.

The CHAIRMAN. Seventy-three?

Dr. WILSON. Well, I'm just making up the numbers.

The CHAIRMAN. OK.

Dr. WILSON. But this is the type of answer that could be given.

No. 2, the national clearinghouse could also provide—besides having the information and giving it to consumers, could give it to victims of various quacks. For instance, this one person I was talking about is presently being sued by the family of one of his victims in Chicago. If there was a central body that had a lot of information on this thing—this was going on for 6 years. This is the financial information on him. This is the modus operandi. It would help the victims of the scam recover damages.

The CHAIRMAN. The irony is we're in a better position to do that now with the advent of computers than they would have been 30 or

40 years ago. In the days of the patent medicine man, he could move from State to State to State to State and nobody ever would have heard of him.

Dr. WILSON. Right.

The CHAIRMAN. We can keep track in this country, of almost every license plate on every automoble and within 30 seconds to a minute after a police officer stops you in Kansas they can find out if the car is stolen in Oregon. If we can do that, we can surely track of these quacks and frauds that move from place to place.

Dr. WILSON. There is one comment Dr. Kime made which is just really brought back some memories for me. He mentioned diploma mills. I don't know if any of you have ever heard of the book "Super Nutrition." It's by Richard Passwater, Ph.D. who claims to have got his degree from Bernadeen University.

Several years ago—and I have a copy of all the correspondence—I wrote Bernadeen University, which was a diploma mill out of Las Vegas, a letter saying Dear Sirs—as a senior medical student, and I'm thinking of writing a book on health and nutrition based upon my experience. My friends have told me that if I have a M.D. or Ph.D. after my name that I will sell many more books. I understand you offer excellent correspondence courses in it. Could you send me some information? A week later here comes back a reply, and I found out that for a—if I just wanted a Ph.D. in something like reflexology or nutrition it was out about $300 or $400.

The CHAIRMAN. Reflexology?

Dr. WILSON. Reflexology. That's where you cure the ills of the body by massaging the foot.

If I wanted an actual M.D. degree it was going to cost between $800 and $3,200 depending if I wanted a lifetime privilege of free consultation with the dean of the school. I thought well, gee, this is great. I wrote them back another letter. I figured I'm going to get as outrageous as I can, and I wrote them back and I said thank you very much for your information. I don't have enough time to finish the correspondence course because the book is going to be ready just any day now. How about if—you know, major universities give honorary degrees to big contributors. How about if I made a contribution to Bernadeen University? Would it be possible for me to get an honorary Ph.D. degree or M.D. degree? And back came the letter saying well, under no circumstances will we give an honorary M.D. degree. However, for a contribution of $1,000 we will be happy to confer you an honorary Ph.D. degree.

Now, what is more meaningless than an honorary Ph.D. degree from a diploma mill, and yet here we have the book "Super Nutrition," Richard Passwater, appearing on TV talk shows giving this advice and for all appearances and purposes this is a bonified scientific researcher who's onto things. You know, if we had the national clearinghouse—I mean even the news media to call up and say what about Richard Passwater, and you could say he has a degree from Bernadeen University which is a diploma mill, and his degree is absolutely meaningless.

Dr. KIME. Also, another area we need some help from the Federal Government would be some research funds, because by its nature this is a difficult subject to research, to try and control, say, just for one of those six factors, and there may be many more. At

this particular point in time it calls for the kind of research where you're going to do interviews rather than pencil-paper type of survey responses.

The CHAIRMAN. Well, it's also difficult to do research on because it is so fractured and disparate.

Dr. KIME. Right, And when I've tried to find funds for research in this particular area, because it's an area of my extreme interest, I keep getting this no, no, no, no, all—it doesn't have the favored catch word or something at the time, so funds in the area of research whether it be with the elderly or medicine or what would help, again.

The CHAIRMAN. I have no more questions for this panel, but let me say this proves what I've said over and over in my 16 years in the Senate. I have never participated in a hearing where I didn't learn something. Much of what you've said may be routine to you or may be you've said it a dozen times to different groups. It is not at all that routine to me in many of its aspects. I can't tell you how much I appreciate it, and somehow, some way, we're going to try and lick this problem. We cannot—as I look at the demographics of this country, we cannot allow the kind of fraud that is existing now to continue with the population aging as it is.

I appreciate it very much. Thank you.

Now we have Dave Shannon representing the Oregon Consumers League; Bernard Muller, the president and general manager of the Portland Better Business Bureau; Ken Keudell, the administrator of the Builders Board of the Oregon Department of Commerce; and Jane Edwards, the corporation commissioner for the State of Oregon.

I might ask, Mr. Muller, was it in the Oregonian I saw the Better Business ad today or not?

Mr. MULLER. That's right.

The CHAIRMAN. It's a good ad.

Mr. Shannon, do you want to start?

Mr. SHANNON. Senator Packwood, I have here a statement by Dr. Ralph Smith, Professor Smith, from Portland State University, who is executive secretary of the Oregon Consumer League and prepared the position for the consumer league, and I won't go over that statement, because——

The CHAIRMAN. Good, that will be in the record.

STATEMENT OF DAVID SHANNON, OREGON CONSUMER LEAGUE

Mr. SHANNON. It will be in the record, and I would say it's a very thorough statement of what the consumer league is seeing in the most years and impacted.

So, I would simply go on from there to ask and make a few observations. One, I would say that I have been working in the consumer field probably 15 or 16 years, and that the consumer field, consumer fraud particularly, is partly a function of the economy; that is as the economy had its recession, consumer fraud in the more traditional term seemed to slow down either because agencies went through their funds to operate or because people did not buy as many discretionary goods.

As the economy resurges and particularly in the last year or so, I think there has been an upward increase in what's been identified as consumer problems and consumer fraud, so that in budgeting for the Federal Trade Commission or for anything else I think there's an interesting and significant correlation between the rise in the economy and the amount of consumer problems.

One of the most obvious areas is the automobile business. as sales went down we didn't have near the problems or they were transferred to used cars or to warranties, and now we're seeing the resurgence of some of the problems we had previously coming back in a new style.

In that regard, it may be a futile gesture and act, but I would say that we've learned quite a bit from 3-day cooling off periods either as prescribed by rule by the Federal Trade Commission and certain industries and by home sales in other industries including health spas, et cetera, on particular promos; but I think a cool 3-day cooling off period in the automobile industry is something that may never happen, but is more than justified. How many times have we heard systems houses say if they get out the door the first they'll never come back as a part of their ingrown philosophy, and how many people would be quite happy to make a rational decision in purchasing an automobile if they could have 3 days to think about it. Yes, I made the deal and didn't pick up the car for 3 days. I doubt that there's anybody that has to have that car within 3 days, and let them think about. If there's such a thing as buyer's remorse, then let them have it, because it's a major impact, particularly when the cost of a new car has gone up to such a proportional size of their income.

The next area that I'd like to mention is that, as we all say, this is the age of information as well as consumption of products, but our analylsis and work in the areas of computers and information in terms of consumer protection hasn't kept up. We're still talking about the selling of merchandise. We're not talking about the selling of information except there was some kind of reference to that here, nor are we talking about the sale of software or computers; whereas we may well see every home having a terminal in it within the next 5 years. What have we done about the disclosures for software? What have we done about the disclosures for repairs or the disclosures of the sellability of equipment? How many people bought computers, for instance, with two K or four K or eight K and find that there's almost nothing they can do with them, or that they don't have the ability to translate it into something usable? So, I think we have responsibility to look at computers and look at information systems in a different way.

Third, I think computers and information systems are going to bring a whole new area of shopping that I think was referred to here. Why is it not very likely that in 2 or 3 years people—elderly people who work all day will buy their groceries, for instance, in a terminal at their house. What they'll do is they'll go in and they'll punch in a grocery list and out will come the prices, and then it will be delivered, the delivery being organized by a computer system, and it will come out on a regular basis, the shut-in deliveries, and so forth.

We are already now seeing computer age shopping done by some of our major computer lines, but we haven't analyzed to see what the ramifications of that are going to be in the ability to have knowledge of a product that we're obtaining and to the problems that will come with that. We haven't stepped ahead and looked to see what the evolution is coming to in the marketplace and how we should see what kind of problems are going to come as it goes along. We will react. We aren't acting. We aren't doing the research in these fields.

So, with that and knowing you have a shortness of time, I just bring these ideas up that I think are important. I've always supported a larger budget for the FTC. I've supported—and the league has always supported more participation of the FTC in the Portland area. As a more specific problem, we miss our district office here, and we hope to see that resurgence at some time.

Thank you.

[The statement follows:]

STATEMENT OF DR. RALPH A. SMITH, EXECUTIVE SECRETARY, OREGON CONSUMER LEAGUE

Mr. Chairman, thank you for the opportunity to present a statement on behalf of consumer interest and senior citizens. The Oregon Consumer League has been representing consumer interests since 1966. More than one-fourth of the present membership classify as senior citizens including the executive secretary. The League fields an average of 55 to 60 complaints per month even though complaint-handling is not listed as one of our five main purposes. We do not try to identify callers or letter writers by age, but many do identify their "senior" status, because their complaint may deal with a matter of especial concern to seniors. Examples would include mobile-home parks and nursing homes. Then too, many of the problems that concern younger consumers face senior citizens with greater impact. For instance, 50% of our complaints involve automobiles and about half of those involve used cars. As our faculties become less acute, it becomes increasingly difficult for us to keep up with the machinations of auto-sales representatives. It is also more difficult for us to shop around both for better buys and favorable interest rates. At times we find it difficult to digest all the fine print in the stack of papers rushed past us for signature. The double talk or ambiguity of many contracts further compounds the opportunity for misrepresentation or deception, intentional or otherwise. It is no wonder that we have complaints such as the one wherein the buyer is talked into buying a five-year repair warranty only to find later tnat the first 12 months were already covered.

With these remarks as an introduction, I will now list areas of possible fraud basing my use of the term on a dictionary definition of constructive fraud ". . . which that involved in an act or contract, though not originating in any actual evil or fraudulent design, has a tendency to deceive or mislead other persons. . . ." [1] (I am not dealing with "intent" at this juncture, nor am I dealing with governmental jurisdiction).

Areas of concern, then, are as follows:

Automobiles, both new and used, problems with sales, repair and warranties. Bait and switch has been replaced with bait and escalate, although it is usually now called "pack."

Insurance, Overloading to fill the so-called medi-care gap; sales harassment with computerized telephone calls.

Bureaucratric intimidation by stores and governments. Complaint systems of many stores and even some governmental agencies operate in a manner calculated to wear out the complainers until they give up.[2]

Mail order.—Seniors are especially susceptible. We find it increasingly difficult to shop around personally in often crowed stores during weather which reminds us that people with arthritis *should stay* home. One needs only to follow the "Action"

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[1] Webster's New Universal Dictionary, unabridged, 1976. Page 729.

[2] Nader, Laur, "Complainer Beware," Psychology Today, December 1979. Page 47.

column in the *Oregonian* to realize the extent of problems of dealing with companies through the mail.

Health spas or clubs.—Here again we deal with the machinations of sales people. Also, a complaint such as this one from one our senior members involves the sale of a fitness center. After the sale, the member tried to get the new company to live up to certain aspects of the contract, and he was told that he would have to deal with the previous owner who, of course, was not available. [I defer to the Attorney General's office for any additional comment on this one].

Hearing aids.—We are bombarded with hearing aid offers, although I suspect that sometimes our friends or relatives send in our names to hearing aid companies. However, when one pays from $400 to $900 for a hearing aid, one needs to know for certain that it is needed and that it will actually improve one's hearing. [I would have spent much money on an aid that would have done little more than amplify sounds. Fortunately, I consulted an audiologist whose tests showed my hearing to be acute but with a slight drop-off in the high frequency range. At this stage, amplification would not help and might actually hinder.]

Relying on oral contracts.—The Senior Center told me that they frequently have complaints from their clientele who have bought wood or hired repairs on the basis or verbal agreements. These services often require payment in currency with no receipt (no doubt to avoid inocme taxes). If the service is not satisfactory, there is virtually no recourse.

Home repairs.—This is an area that is so well-known and documented that I will mention only one phase of it. Senior citizens gradually have to hire more and more work done from lawn mowing to cleaning the gutters, hence they are more vulnerable to being "taken."

Second mortgages.—We are deluged with offers to turn our home equities into cash. I have yet to see one which is not a rip-off.

Nursing homes.—The proliferation of extra charges, losing things, the high cost of drugs compared to the pharmacy down the street, and moving persons without their consent.

Mobile-home-park profiteering based on rental increases and extra charges far higher than required by inflation. One park change hands, and an absentee company-owner more than doubled the rent and reduced services. Seniors who settle in mobile homes are usually no longer themselves mobile. They cannot easily jack up their homes and move to another spot.

Labeling, fine print, pot pourri.—I have reached a conclusion after years of reading small print in advertising, on labels, limited warranties, and instructions, that the chief reason for much that is small print is to mislead or underemphasize. Items that come to mind:

Refund policies—stores, advertisers, and mail-order catalogues should have to iterate refund, exchange, or credit policies in locations and in type large enough so that none of use can miss them. If mail-order items must be returned within 30 days, it should not be kept a secret until after the item has been returned late.

Labels—I didn't get to attend the F.D.A. hearings on food labeling, but you can tell the F.D.A. for me that present labeling is of little help to seniors. A mishmash of F.D.A. data is often useless and in such fine print that one needs a magnifying glass to read it. A listing of ingredients only is absurd without information as to sources and quantities of such items as oils, sodium, and chemicals. Those of us at an age when we have diet problems, need help. [Speaking of can labeling, one quirk came to our attention. A woman placed a shortening can on the stove to melt down the last bit from the empty can. The can burst into flames, for that shortening now comes in cardboard cans. An obscure notice easily overlooked did appear on the can.]

Finally, credit cards.—It is within the immediate purview of the Senate to ban surcharges on credit cards. Many of us still carry a card or two despite the imposition of annual charges, we like to charge amounts to stretch our paying more in accord with monthly pension receipts. With a credit card we can meet unexpected expenses, and it often helps avoid the hassle over getting a check accepted. If we have to pay an additional 5% over purchase price, we will probably cut our cards in two and turn them in.

The CHAIRMAN. Thank you. Mr. Muller.

STATEMENT OF BERNARD A. MULLER, JR., PRESIDENT-GENERAL MANAGER, PORTLAND BETTER BUSINESS BUREAU

Mr. MULLER. Senator Packwood, I want to thank you for having the Better Business Bureau here today.

We see several frauds which are aimed specifically at the elderly. Some of them more difficult ones to deal with are illegal at the present time, and they do find themselves in the legal arena. That would be the bunco and fraud schemes like the bank examiner, pigeon drop type schemes. These types of operations, of course, are prosecuted by the local police and the district attorney's office.

Home repair fraud doesn't quite fair as well as far as law enforcement, but with the pigeon drop, though, the mobility of the schemers and the perpetrators there does give law enforcement a problem. In the home repair fraud area we're seeing, I would estimate myself, probably millions of dollars being bilked from the elderly annually. This is accomplished through misrepresentation of the quality and the quantity or type of work being done that leaves the elderly with inferior work, with work that's not complete, that type of thing.

Where are the problems? They're references not asked for, backgrounds not checked. Again, it's a kind of a con type of thing, and when the individual does get the confidence of the elderly person these mistakes are made.

The Williamson gang, of course, is a national, large chain of bunco artists that deal in this type of fraud. They're very large. We understand that there are at least 1,500 members of that family at the present time. A few years ago when a group of or an arm of the Williamson gang came to town there were 30 separate parts of that family where they were driving new Continentals or Cadillacs, new four-wheel drive pickups, and large travel trailers pulled behind brand new four-wheel drive vehicles, so we're looking at more than a million dollars' worth of rolling stock coming into our towns to perform some ripoffs. The financing of this kind of equipment comes from the elderly. In addition to that, the gang has properties in California and Texas estimated in the millions.

Very difficult to combat that. Local law enforcement agencies are seeing that type of fraud as not being very important. They see it ranking down in their priorities in relation to other crimes where there might be some blood or some damage that's visible, and it's easier to handle.

Victims in many cases make poor witnesses because of their infirmities, and I think this is one of the problems that we have with regard to that. Again, the fly-by-night tendency of the perpetrator or ripoff artist is a real problem for law enforcement, again. You can only catch them when they're here. Law enforcement does have their priorities.

Education seems to be the best answer to a lot of this, and I think part of that is, of course, to get friends and relatives to become active with the elderly so they don't fall for this type of routine. That's what we've been trying to accomplish. Again, the priorities in law enforcement would help greatly.

Quackery, of course, is a major area of concern. I'm glad to see that you took excellent testimony on that this morning. We're still

seeing ads for useless products with claims such as miracle cure, breakthrough, uncovered the secret, and amazing. Hopefully the FDA and FTC can do more of their good work in this area in eliminating that type of fraud.

I heard some testimony earlier about health food stores, and I'll inject something in what I was not going to say. In our family we bought a product recently. My wife has a weight problem like many people do. Her product that she bought came from one of the malls, a very reputable looking establishment, but knowing what I know about quackery I asked her what is that product, and she couldn't tell me. So, I sent her to doing a little research trying to find out what that product really was. She checked with several sources that we had, and we couldn't find out what it was. So, finally after several referrals she ran into a lady with a medical dictionary on different pharmaceutical products, and she found out that it was, in fact, a narcotic; and so, I think I will have to go along with the people that recommended further concern at the FDA level for that type of product.

Work at home schemes victimize many elderly people. The infirmed, sometimes young married couples, the lady is tied to the house and also can get involved with the work at home schemes. These are things where they're promising jobs, and you end up buying supplies. They're not as major as some of the other things we saw, but when you are on a fixed income and you need money you don't need to be ripped off. I think that's important.

There are some trends that I see. Many people are retiring with more money than they ever have, so this leaves a pot there for the ripoff artist to go after that he didn't have before. The common ripoffs of the past, of course, are going to continue unless something is done, and their level will either stay the same or increase, depending on the ability to do that; but what I see is a big ticket type of fraud against the elderly in the future. The technology is there for the con artist to work with.

I feel investment schemes are starting to key on the elderly. The price tag of this kind of fraud, whether it's an investment in worthless gems or oil wells or so-called high tech industry, can be in the several hundreds or thousands dollars wiping out somebody's entire retirement package, and I think that that is an area where the Senate should pay some attention to, the type of security type of games that will be played in the future.

Thank you.

The CHAIRMAN. Thank you. Ken.

STATEMENT OF KENNETH K. KEUDELL, ADMINISTRATOR, BUILDERS BOARD OF THE STATE OF OREGON, DEPARTMENT OF COMMERCE

Mr. KEUDELL. Thank you, Senator. I also, like the other individuals testifying, am pleased to have the opportunity to share with you some experiences that have come to builders board.

Builders board is an agency of the Department of Commerce the State of Oregon created in 1971 with a primary mission of protecting the consumer in construction related problems.

One of the problems or difficulties I have here today is talking to you about how many elderly people are victims of home construction or improvement fraud, and quite frankly, Senator, I can't tell you that. When elderly people become the victims of fraud they often do not tell anyone, and that's already been discussed today, except that there's another reason why they don't tell. One is that they are frightened for their own safety and for the welfare of their property, and that may be perceived and may be real, but they're also frightened of what their sons and daughters will do to what privileges they may still have left, if they find out that they have so-called given away some money for something that wasn't necessary; that they might be perceived as being senile and that they might be put away in a home someplace.

I have four examples, and Attorney General Frohnmayer used one of them, except I had a little additional twist on that, Senator. An elderly woman living alone who paid more than $13,000 to two individuals to repair the roof on her home. This problem was brought to our attention by the woman's 66-year-old son, so this one was very elderly. Very little work was performed. It was by two individuals. The victim in this case wrote 94 checks over a period of 7 months. One of the individuals was on parole when he victimized this woman. He's now back in prison; however, there's no way of compensating this lady for her loss.

Another elderly woman living alone paid more than $32,000 for a variety of home improvements. The work extended over 14 months, and there were 18 different contracts. Much of the work was unnecessary and the charge was usually excessive. Our investigation—sending an investigator out we determined that she may have gotten as much as $6,000 worth of value out of $32,000 that she paid to this builder.

By the way, neither of these first two were registered with builders board.

The CHAIRMAN. Well, most of the people that are involved in this kind of fraud are not registered with builders. They're not builders at all in the normal sense of the word.

Mr. KEUDELL. That is true. That is true.

The third claim is an 84-year-old woman who was widowed less than a year who paid more than $15,000 for work that had a value by our investigator's estimate of $75. In this case the builder convinced the victim that her roof needed replacement, the water pipes were rotten and needed replacement, the bathtub was resting on rotten boards and would fall through to the basement at any moment. None of these deficiencies actually existed.

In this case the builder was registered, and it's one of those situations where the victim got $4,700 of the $15,000 back through the builders bond still is out more than $10,000. The builder obviously is no longer working and will not be able to until he makes good on the problems that he or she has created.

The fourth example is the one Dave Frohnmayer used. I won't go back into that one. It was brought to our attention by a bank, and it seems that often banks do find situations where the victim is going to pay for something in cash. This case, if you recall, was $14,000 to paint a front porch. The builder was going to be paid in cash, and that's how the bank became involved. The victim showed

up at the bank and tried to withdraw $12,000 to make the final payment on this, and the bank teller thought there was something suspicious.

The victim in this case will not file a complaint nor will he testify against the builder. He fears for his own safety and the security of his property. This builder was not registered. In this particular case we are having difficulty getting good cooperation out of the sheriff's department who refused to turn over information and will not testify because of fear of law suit by the individual who we believe actually caused the problem.

There are some common elements in these fraud examples and in others that we could discuss. In these four examples none of the victims asked for references from the builder. None of them. None of the victims asked for a second opinion or a bid from some other builder. None of them. None of the victims made the first contact. In other words, they weren't looking for somebody to work on their home. None of these victims asked friends, relatives, or others for advice, and perhaps the saddest thing about it is there were no other—there were no friends or relatives or others around to give them advice.

I think our senior citizens can be protected from fraud in the construction area. I'm not sure that new laws are needed. The solution, I believe, involves education of the consumer and a strong commitment on everyone's part to assist our senior citizens and others who are targets for this type of fraud.

For the past several months we've been giving out a one-page—actually two sides—letter to homeowners; "How To Prevent Home Construction Problems." In that letter—there's a lot of material there, but in that letter there are seven steps that we suggest to anybody. This doesn't involve just seniors, but anybody who is going to build a home in Oregon or have improvements made to their home.

The first one is to make sure that the contractors or subcontractors are registered with the builders board. Now, you can't stop there, because this is only financial protection. Check references, and one of the ploys that's used is telephone references, and don't go with telephone references. See the work that the builder has done. If you're concerned about financial, check financial references, also. Three, put agreements in writing, not only the contract, the changes. Four, get a building permit, and often this is where the problems occur, because people don't get a permit thinking they're going to save money when, in fact, it might cost them their life. Five, before accepting the job, walk through it, make sure that the problems that are there, if there are any, are going to be corrected. Six, when you're unsure about what action to take, seek assistance. In the Portland area you've got a home builders association, you're got the Oregon Remodelers Association, you have your lender, perhaps, in many cases, local building departments, better business bureau, consumer protection agency. Some people have an attorney they can talk to, and obviously they can call builders board. There are all sorts of areas of assistance, but the consumer doesn't always know about this. If problems do develop, then we want them to come to builders board.

Senator, I think we need to find a way to get a list of this nature in the hands of homeowners, and when we do, we need to include names that they can contact. Finally, all of us must show more concern for our senior citizens. We have to visit more often with them. We have to maybe even get to the point of where they get angry at us. Find out what they're doing and make sure that they know that we're there to help. Most of us have elderly neighbors or fathers or mothers or uncles or aunts, and probably we're all guilty and could do better in this area.

I believe we can prevent a large percentage of construction related fraud through education and through interest and concern on our part. Our experience has shown we can prevent the problem. It's far more difficult to resolve the problems after they have occurrred.

Thank you.

The CHAIRMAN. Thank you. Ms. Edwards.

STATEMENT OF JANE EDWARDS, CORPORATION COMMISSIONER, STATE OF OREGON

Ms. EDWARDS. Senator Packwood. I'm the corporation commissioner of the State of Oregon, and we have the authority over sale of securities in Oregon.

There is a significant amount of securities fraud going on now in the State. I don't think we're different than other States. I think that it's just a good thing for people to filter into.

I'd talk about some of the cases we have, and I'd like to express my concern about what appears to be the inadequate staffing of the Federal agencies who work in the securities fraud area.

Securities fraud cases involve millions of dollars and are difficult to investigate due to the numerous bank accounts, interstate transactions, lack of paper trails, and volume of investors. The lack of resources by State and Federal agencies result in the plain fact that regulators work too slowly to protect investor moneys. By the time investigations are completed and ready for prosecution the promoter is gone and so is the money.

Elderly people in particular are targets for securities fraud, I think, for several reasons. Often they have cash available, in many cases savings that they have. They have a pension fund or retirement programs where they can withdraw large sums of money. In many cases their houses are paid for, and they're able to get second mortgages on those homes, for example, if they want to raise money in a securities deal.

In a couple of cases I want to talk about the first involved Haven Properties operated by Lloyd Sharp and George Anderson. These folks raised about $6 million from investors in Oregon and other States primarily to rehabilitate distressed properties in Kansas City, MO.

I brought with me the copy of the advertisements that were run in the Oregonian in early 1981 with such things as Lloyd Sharps amazing offer for 1981. If you don't make money through my real estate investments I'll buy them back. You can make a million. Let me show you my proven method by Lloyd Sharp. Free money seminar. Come see how you can make money, make more money. How

to start, where to start. Our proven formula making money. It really works, and so on, and what they did, then, was have a series of seminars at local hotels where they brought in the investors and took their money.

They told investors that the investments were secured by trust deeds, but in most cases a number of people were participating in one trust deed, and the property was not worth what the debts on it were.

As a part of this program, they utilized another company, Pension Plans of America, Inc., where they got thousands of investors' pension funds rolled out of safe investments to extremely risky real estate rehabilitation program.

Let me say that many of these people set up innumerous corporations, so it's sometimes hard to track, because they advertise under one name and then under another name, and so on.

In the spring of 1981 the corporation division filed a suit seeking an injunction which we obtained in December 1981. Sharp and Anderson filed bankruptcy in Oregon and Missouri. The Securities and Exchange Commission filed a civil suit seeking remedies in the spring of 1984.

Let me say that none of the securities they sold were registered with our office or with the SEC, and they were never licensed, the securities brokers, the salesmen, totally beyond the pale of the law.

The second case involves a man named Robert Clay who was an employee of Lloyd Sharp and studied under him. Then he set up a company called International Administration Investments, Ltd., after we have the injunction against Mr. Sharp.

He offered a discretionary investment program where investment funds were given to him. They told that they would get interest rates between 18 and 22 percent, and they would be backed by gold bullion or a certificate of deposits or real estate. Most cases nothing secured the investments, and much of the money was diverted to noninvestment purposes for Mr. Clay including a gold mine in Idaho. He also found a company, Au Dyne Mining & Development Co., where he had some registered stock but also sold considerable amount of unregistered stock of over $1 million.

We obtained an injunction in August 1984. We have referred the case to the Multnomah County district attorney for criminal prosecution. Both the Internal Revenue Service and the Securities and Exchange Commission are still investigating.

I said in many cases elderly people are targeted for these programs, particularly people just retiring. We have cases where the con artist will read, you know, announcements in the paper that so-and-so is retiring and have a retirement dinner, or whatnot, and they can show up at the dinner and start talking to them about taking their retirement funds and putting it into money programs or pulling it out of their IRA's into these various programs.

Elderly people, I think it would be safe to say, that they tend to have cash available. They're looking for investments. They tend to be unsophisticated in terms of investments being unlikely to read the Wall Street Journal or read the various trade, you know, magazines, Fortune and whatnot, that would discuss investments and believed that if they find the right investment they'll have excellent returns and, of course, significant tax breaks. In many cases they

think they're putting money into something that's guaranteed secured as opposed to a risky proposition.

Securities fraud can be prevented through public education and aggressive enforcement and prosecution. I think our State and I think the other States in general are doing as much as they can, but when we have a complex multistate case, we need the resources of the Federal Government. It appears now to take a considerable amount of time before the SEC or the IRS get into these cases, and even when they do investigate then they have to proceed through the U.S. attorney's office which also has limited resources particularly for this kind of white collar crime.

Thank you.

The CHAIRMAN. Let me ask you all this question. After listening to this panel and the panel before, it seems obvious to me that all of the king's horses and all of the king's men together are not going to stop this kind of fraud if there isn't some kind of network, education, communication—I can't quite put my finger on it—among those or between those who may get bilked or at least receiving some advice whether it be from the better business bureau or the Oregon Consumers League or something. In the long run that may be more effective than all of the ad hoc after the event prosecution we may be able to enter into.

I'm curious, either Mr. Shannon or Mr. Muller, if you could comment on that.

Mr. SHANNON. Well, I think education is important, but it's not the education of knowing exactly what's in the contract or who these people are. It's also the process of being able to avoid intimidation. In other words, I might sign a lot of things not because I might be suspicious that somebody was doing something wrong, but I'm going to be intimidated. That is don't you trust me, you really want to go some place else, it's a lot cheaper. It's the art of negotiation of knowing what you want. Education, therefore, can't be, there are 20 agencies which, when you call, they say we'll send you a form which you will fill out and then you get it a week later.

The CHAIRMAN. What kind of education is available now?

Mr. SHANNON. I don't think there's very much education, particularly in the senior, designated specifically for this. It's done as a kind of a sidelight to other types of education, and it's done partly to say there are agencies available and beware in general without the role playing, for instance, that I think is important or the support. There's been affirmation you need support of these people so they don't feel isolated, and I think it's a good point. They don't feel that if they make a complaint or talk to somebody that it's going to be a negative impact on them. So, it's not a question of saying well, there's all these agencies out there. It's just saying how do I handle this problem and go through the actual role of doing it and knowing in a more affirmative way how the other agencies can participate. I think this is very important.

I think there are a lot of avenues that this can be done on. The trouble is you can't measure the productivity for purposes of your budget or anybody else's to say what you got out there at the end, but if you could do this, I think it would be tremendously helpful.

I think cable television, I think meetings, these kinds of supports can be a big play. I think grants to allow people to develop this

kind of educational process through the senior centers and through other processes where they do meet and do get support to address themselves directly to this problem would be helpful.

The CHAIRMAN. Now, you mentioned two areas that I think have some potential. One is cable television which is has a much more diffused audience, and you can zero in on those programs that seniors may watch, and by getting on those cable shows or even if you have to spend money to advertise on them it's much cheaper than advertising on the over-the-air, across-the-board, cover everybody from age 3 to 300 channels.

The other area is the senior centers. They are an absolute fount of information, and especially I find this true in smaller towns; that people go to those, they use them, they're familiar with them, and if there's anything we get our money's worth out of—they're relatively inexpensive to run—those senior centers are a cornucopia of centers of distribution of information.

Mr. Muller, what does the better business bureau do or what can they do to help in terms of education, seminars?

Mr. MULLER. Well, we are active in tis area with certain advertising, as you alluded to earlier. we are coming up with some spots which will help somewhat in this area.

The CHAIRMAN. Spots. You mean television, radio?

Mr. MULLER. Television, PSA's, and that type of thing.

There are other efforts by regulatory agencies to do similar types of things. I think—where I see the problem is you can educate a good portion of the people, but I think like Mr. Shannon pointed out, there are going to be certain instances where effective law enforcement on the problem could do a lot to dissuade some people from being active in that area. I think that's really important to key on that. We should continue to do what we can to educate them from our level and from whatever levels there are, but still, like in the drug area, you know, increased activity by the FDA could do a grat deal to eliminating some real problem products, and education in that area, I don't think, is going to help. I think that is really an enforcement problem that BBB cannot educate people on what is a quack drug. We can tell them to talk to their doctor and things like that, but it's not something that really is very educationable when you get into a potential cancer situation or something like that.

The CHAIRMAN. OK. I have no more questions. Again, thank you very much for coming.

We'll conclude today with Carol Crawford who is the Director of the Bureau of Consumer Protection for the Federal Trade Commission. Welcome.

Ms. CRAWFORD, Senator, how are you?

The CHAIRMAN. When did you get here?

Ms. CRAWFORD. About 5 minutes ago.

The CHAIRMAN. I might say for the benefit of the audience, I've known Carol for a long, long time. She was the first employee that came to work for me when I went to Washington in 1969. I thought I was going to keep her forever, and one day she up and quit. Fortunately, she alleged no irritation with me but just frustration with the Government bureaucracy. She wasn't going to have anymore to do with it or deal with it. She went off to law school where she

graduated very, very high in her class, and what does she do after a few years out of law school but come back to the Federal Trade Commission in then an administrative capacity to the Chairman. She now heads the Bureau of Consumer Protection, which is one of the three principal bureaus of the Federal Trade Commission. I think of all of the employees I've had working with me over the years there are few that equal her and none that exceed her.

It's good to have you back in Portland.

STATEMENT OF CAROL T. CRAWFORD, DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION

Ms. CRAWFORD. Thank you, Senator. That's quite a welcome. I very much appreciate that.

Let me say at the outset that, speaking for myself and I believe for the entire Commission, I very much appreciate your holding this hearing on what we consider to be one of the most serious and at the same time most difficult problems facing the country and the people of Oregon.

We at the Commission under this administration have really tried to focus our efforts on problems for our senior citizens. They are frequently among the most vulnerable to the many kinds of frauds that we have found in the marketplace and, at the same time, in many cases, are the least able to protect themselves against many kinds of fraud, as your witnesses this morning, I'm sure, have indicated. So, we very much appreciate your leadership in really helping to focus attention on what we might do on a voluntary basis as well as legislatively to allow all of us to deal more effectively with these problems.

I have a written text that I would like included in the record.

The CHAIRMAN. Has it changed any from the one that said "draft" on it that I read?

Ms. CRAWFORD. I don't believe so.

The CHAIRMAN. OK, that's good. Then that statement I've read.

Ms. CRAWFORD. You might check with staff.

The CHAIRMAN. OK.

Ms. CRAWFORD. I believe it's virtually identical. Maybe some finishing touches. I would request that the entire statement be printed in the record.

The CHAIRMAN. Without objection.

Ms. CRAWFORD. I would appreciate that. And let me also make a standard disclaimer initially. The views I express are my own and do not necessarily reflect those of any Commissioners or of the Commission.

I think——

The CHAIRMAN. I might say the reason Carol makes that disclaimer—and it's understandable—she is not a Commissioner, and in the last analysis the decisions of the Federal Trade Commission are made by the Commission. She heads one of its three bureaus, and her opinions, I'm sure, carry great weight with the Commissioners, but she is not here in a position to bind the Commission by what she says today.

Ms. CRAWFORD. That's artfully explained. Thank you.

What I will try to do briefy is to describe areas where the Commission—that is, this administration at the Federal Trade Commission—has tried to focus our resources where we have felt we could have the most impact on the kinds of fraud against the population in general, but specifically those frauds that tend to be targeted toward older people.

The first area of fraud that has been discussed this morning is what we generically refer to as health care fraud. We have tried to examine those areas of false or deceptive advertising, false claims for health care, goods, services, or products, that have the most potential to injure consumers. Let me tell you the kinds of injury that can occur in a health care context.

If a product is advertised, for example, as an arthritis cure or a pain reliever for arthritis and, in fact, it is based upon false claims or false evidence or does not have substantiation, then there are at least three kinds of injury that can occur to the person who is taken in by those claims. The first injury is the economic injury. The person who spends the $10 or $15 or $20 to buy the product that simply isn't going to perform the way its makers promise. The second kind of injury is that in many cases products can actually do harm to the people who are taking, for example, a phony drug product. These products have the potential in many cases to do affirmative damage to the invidual's condition. Third, and this is particularly true, we find, in arthritis cures, these products have the potential to deter the individual from seeking proper medical treatment for that kind of condition. They divert the individual from a proper procedure or therapy or perhaps from seeking proper medical attention. They persuade the individual into relying on taking a cure or a therapy of some sort that simply has no basis in fact.

Now, as I've mentioned, we have focused on arthritis cures. We have just recently obtained a consent order with one manufacturer that was selling a product advertised as a mineral ice, a topical product that claimed it would help to reduce the pain and the inflammation from arthritis. The Commission alleged in its complaint that there was no basis for that claim and that the claims were false and unsubstantiated.

We have, as I say, obtained a consent agreement with that company to prohibit such claims unless they are substantiated so that hopefully no other individuals will be taken in by those allegedly unsubstantiated claims.

A second area that we have focused on involves really outright fraud against senior citizens. We are currently in litigation with a company that was advertising—that still is advertising—that if an individual sends a piece of hair that they will perform an analysis and determine what your nutritional deficiencies are. Then they will sell you the vitamins to correct the nutritional deficiencies. Well, there's simply no basis in fact for this analysis. The company, we alleged in the complaint that we however believe, is making a great deal of money out of selling the drug therapies—that is, the vitamins and minerals—to the individuals who feel that whatever is wrong with them is going to be cured as a result of their hair analysis. We are currently litigating this case in Federal district court, and I hope that we will see an early resolution. Thus far, we have obtained a preliminary injunction barring deceptive claims

and freezing the company's assets to ensure their availability for consumer redress.

A third very important health care claim that we have focused our resources on relates to false promises of cancer cures. Now, one recent case concerned the manufacture of a small dehydrated vegetable capsule. The manufacturers claimed that this dehydrated vegetable capsule would help reduce the incidence of cancer. It sold at a very healthy price, I should say, and it cited as its basis for making the claim a National Academy of Sciences report, which sounds very impressive and presumably encourages people to rely on the claim. Unfortunately the National Academy of Sciences specifically said that their findings did not relate to dehydrated vegetables. Consequently, we alleged the claim was false and obtained a preliminary injunction very quickly against the advertisements. We have also obtained a consent agreement that permanently bars the use of false or unsubstantiated claims. We are also currently in litigation with another company that is manufacturing a similar product making similar claims.

So, we've been very aggressive in the health care area because we feel that that is one of the most particular and most difficult areas for senior citizens in particular.

A second area that has just been touched upon by your earlier witnesses is the area of investment frauds. Investment frauds hit senior citizens particularly hard, because they are vulnerable. They frequently have hard-earned assets available to invest and are convinced by "watts-line hustlers," operating out of "boiler rooms," that these people can somehow safely obtain large returns on their money for them.

We understand that in many cases their strategy is to befriend a senior citizen who may be lonely, and in that way gain confidence and eventually get the money. We're talking about very large investments from $5,000 to $10,000 and more in many cases.

The Commission, before this administration, interestingly had been reluctant to pursue investment frauds, for a couple of good reasons, actually. One is that investment frauds are very difficult to investigate. It's difficult to develop a case because in many instances they rest upon evidence that relates to oral misrepresentations. Therefore, it's hard, to collect and document the information we need to go into court and obtain an injunction.

Second, those who are involved in fraudulent investment schemes frequently take refuge in the bankruptcy courts. This can pose problems for us because the Federal bankruptcy laws were not intended to deal with this kind of problem.

Now, this administration, under the chairmanship of Jim Miller, felt that the losses suffered by senior citizens and others as a result of investment frauds were of a significant magnitude and growing. There was no evidence that these investment frauds were going to disappear on their own, so we set about to devise a way to find a way to deal with the problems. We have, I would suggest, been very successful in that effort.

We currently have 71 defendants under court order. We have obtained, just recently, the largest cash settlement ever in an investment diamond scheme. We've obtained $6.7 million in a consent agreement with International Diamond Corp., formerly the largest

investment diamond company in the country. Finally, we have successfully pursued some defendants into bankruptcy court.

In addition to targeting oil and gas lottery schemes, we have pursued a number of franchise sellers that are basically of the same mold. They are fraudulent operations taking advantage of senior citizens and many unemployed individuals looking for new business opportunities who simply end up losing many thousands of dollars.

I could go on with a number of other areas that we have tried to target specifically to protect senior citizens. I will mention one other way in which the Commission has proceeded and a way in which we have expanded the Commission's activities that goes to an area that you were just inquiring about with the Better Business Bureau, and that is consumer education. We have expanded the Commission's consumer and business education office and have worked closely with the American Association of Retired People in developing a number of informational materials that hopefully will help senior citizens avoid the kinds of problems that we have found out there, we believe that trying to prevent these problems from occurring is always a sounder approach than trying to correct them through litigation that follows.

Thank you very much, for the opportunity to present these remarks and I'd be happy to answer any questions you might have.

The CHAIRMAN. Carol, let me ask you this. In your statement you say that frequently the FTC has difficulty in its investigations getting information, getting people to talk. Elaborate a bit more on that. Before you got here several other witnesses said the same thing involving local circumstances.

Ms. CRAWFORD. Yes. The investigational procedures under the Federal Trade Commission Act, which allow us to pursue administrative investigations are generally satisfactory when we are dealing with relatively stable businesses. Where we have encountered difficulty is in prosecuting cases of fraud when we go to Federal district court.

There are several problems. One problem involves delays. The procedures that we use in pursuing a complaint against a stable, ongoing, responsible business entity may create problems when we pursue a complaint or serve process on a company that basically is a fraud. If given any notice or warning they will destroy their documents or they will simply flee to avoid service of process. They will close down their business and move to another State. So, we do face particular problems, taking several forms, when we try to tackle fraudulent operators.

One of the most difficult is the question of service of process. We are required under the Federal rules to serve process either personally or at a residence to a person of suitable age and discretion. In many cases we are pursuing fraudulent operators, who clearly have it in their interest not to facilitate process as we find in most other cases of civil law, but rather it is in their interest to avoid service of process. We, therefore, have had a great deal of difficulty in serving process on many of the defendants that we have targeted. They, for example, can simply hide from us. We have chased defendants across town in some instances. The opportunity to serve at a residence, again, can be thwarted by simply refusing entry to the process server.

There is a provision in the Federal rules that allows service by mail, but it requires an acknowledgement. Fraudulent operators can refuse the acknowledgement, so there are a number of ways that we can be thwarted.

There are different ways, I think, that you and the Congress could help us in this area. One, is to facilitate the service of process by allowing us to serve process on the owner or officer of one of the fraudulent companies at his or her place of business through delivery of service at the place of business. This, we believe, would greatly facilitate and would avoid the kinds of delays that we experienced.

The CHAIRMAN. Carol, let me ask you this further. Today there's been evidence of just endemic fraud, some of it major, some sales of securities, some of it relatively minor although to the elderly person that pays out $3,000 or $4,000 for something that is nothing, that is not a minor situation in their mind; and yet I cannot imagine in my mind, trying to turn the Federal Trade Commission or the Food and Drug Administration into a FBI or try to have them be the policeman for everything that goes wrong.

We've had witnesses from the Oregon Medical Association today, from the University of Oregon, from the Oregon Consumer League. Something is falling between the cracks some place between the district attorney's office and the attorney general's office—and Attorney General Frohnmayer is here—and the Federal Government. Somehow thousands, billions of people are being bilked out of small amounts or, in some cases, large amounts, and they don't know quite where to turn, or when they do, it just doesn't fit.

What do we do? I mean "we" in the whole sense of the United States, not the Federal Trade Commission or not the Multnomah County district attorney's office.

Ms. CRAWFORD. It's difficult for me to respond without focusing on our experience in dealing with fraudulent operators. I would, again, refer to previous Commissions being unwilling to go after fraud, because it is difficult to deal with. Maybe that's the best answer. Fraud is a very difficult area to investigate and to prosecute successfully.

We have had now 3 years of experience in prosecuting fraud because of exactly the same conclusion that you've reached; that there is a very severe problem out there and it was not being dealt with effectively. We are, I believe, dealing with it effectively now. We are, I believe, dealing with it effectively now. We have, as I mentioned, 71 individuals and companies currently under order, under court order to prevent them from initiating new scams.

Now, I will mention one other way that we at the Commission have worked within our existing authority, to allow us to be more effective. Previously the Commission had focused on suing corporate defendants, but not individual defendants which simply allows the individual to set up a new company. We have sought to name individuals as defendants to prevent that problem. Currently we have 45 individuals under court order.

The CHAIRMAN. When you way under "court order" do you mean injunctions?

Ms. CRAWFORD. Yes, injunctions.

The CHAIRMAN. You're not talking about criminal indictments. You mean——

Ms. CRAWFORD. No. Under injunctions to prevent them—under threat, contempt of court, from becoming involved in any similar kind of fraudulent activity. We estimate that just in the cases we've brought in the past 3 years, we have prevented an estimated $224 million of additional injury based upon what we estimate they have bilked consumers out of in the past.

The CHAIRMAN. What do we do—I used two situations earlier as examples. They're simple. One, I order a cord of wood only I don't get a cord of wood because the person that delivers it thinks that I don't know what a cord is; but because I do, I will try not to pay for it. Sometimes if I order two or three cords and it comes all piled up in a truck it is hard to tell whether you got two or three cords or not, but I've just discovered if I ask am I getting a full cord, I discourage lots of people from bothering to deliver.

Second, on home repairs I discover lots of things in the mailbox, just stuck in the mailbox, and if I simply ask for a list of references that will get rid of half or so of those people who want to do anything.

Those types of issues, however, don't even rise to the level—I don't mean this critically—don't rise to the level of the dignity of the Federal Trade Commission. These are small time operators bilking 10 people or 100 people in small areas around this country. How do we stop that? Is there a way of stopping it? What can be done?

Ms. CRAWFORD. At the local level?

The CHAIRMAN. Well——

Ms. CRAWFORD. The smaller incidents of——

The CHAIRMAN. You know my philosophies on this. I am not adverse to trying to stop it at the Federal level if I thought I could but I am not sure that all of the powers of the Federal Government, no matter how much we might fund it, are going to be able to catch all of these people involved in con games trying to bilk the elderly. There's much to be said for local networking and neighborhoods and senior centers and a variety of other ways of getting information out or messages to beware of that person, he's been around here before and he's not to be trusted. But, yet a great number of the elderly are being defrauded. They're being bilked, and the network its't working, and the Federal Trade Commission doesn't have enough budget to get to them and, as I say, I'm not sure that you ought to have an agent in Pilot Rock and in every town. Even that wouldn't catch them.

I'm frustrated because I haven't got the answer. I hate to think the answer is nothing can be done and a certain percentage of people are going to be bilked. That's kind of like the district attorney's answer on crime. Well, a certain number of people are going to be robbed and a certain number of people are going to be burgled, and we'll try to catch them afterward, try to prosecute them and then they'll go through the problems with plea bargaining and overcrowded jails and it doesn't work. That is no great solace to the person who has been robbed or burgled, and it is no great solace to the person who has been bilked out of $4,000 to fix their furnace when there appears to be no remedy to get their money back and

really no effective way to take the person off the street that's doing it. I just don't know the answer.

Ms. CRAWFORD. I certainly appreciate your frustration. I think one of the best friends to senior citizens and the population in general is the Better Business Bureau from whom you just heard. We work very closely with the Better Business Bureau as well as the State attorney general and, in addition, I should add local consumer reporters. Local consumer reporters serve two functions. They give us, in many cases, good information through our regional offices about possible scams or violations of the law that we otherwise would not learn of; and, second, they, along with the Better Business Bureau and the State attorney general, are often able to intervene on behalf of an individual consumer to right an individual wrong that the Federal Trade Commission is simply not equipped to handle.

The Better Business Bureau in particular, I think, serves both the preventive as well as the remedial function in many cases. I think, additional consumer information, alerting them to the wealth of knowledge housed at their local better business office would be helpful. It would be immensely useful for consumers to know before they do business with a new company, one that they and their friends have not done business with before, that they can simply call the Better Business Bureau, ask if they have any information on that company, do they have any complaints. That's a wonderful way of getting information about possible problems with a new company that you're not familiar with.

The CHAIRMAN. Carol, I haven't got anymore questions. I appreciate you coming this far for this hearing and also meeting with some groups before you take off this afternoon.

Ms. CRAWFORD. Good, thank you.

The CHAIRMAN. You've lost none of your sharpness or luster in the years we've been separated. I appreciate it.

[The statement follows:]

STATEMENT OF CAROL T. CRAWFORD, DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION

INTRODUCTION

Mr. Chairman: I am pleased to be here today to discuss the Federal Trade Commission's activities to combat fraud as it affects older Americans, especially fraudulent activities in the health care area.[1] The Commission has devoted special attention to fraudulent or deceptive food, drug, and health care claims affecting older Americans, who are particularly vulnerable to injury from such practices.

My statement today will first briefly describe the Commission's authority to pursue fraudulent claims. I will then discuss some of the Commission's activities of particular importance to older Americans, focusing on the food, drug, and health care areas. Finally, I will describe the remedies available to the Commission and some of the problems we encounter in trying to pursue deceptive and fraudulent marketing claims effectively.

THE COMMISSION'S AUTHORITY

The Commission has the authority to proceed against deceptive and unfair practices under Section 5 of the Federal Trade Commission Act (FTC Act).[2] Section 5

[1] The views expressed are those of Carol T. Crawford, Director, Bureau of Consumer Protection, Federal Trade Commission. They do not necessarily reflect the views of the Federal Trade Commission or any individual Commissioner.

[2] 15 U.S.C. § 45 (1982).

declares unlawful unfair and deceptive acts and practices in or affecting commerce. We consider fraudulent practices to be the most egregious type of deception. We also have the authority to proceed against false food, drug, device, or cosmetic ads under Section 12 of the FTC Act.[3] The Commission can act under either Section 5 or Section 12 or both sections to halt certain health-related acts or practices.[4]

When the Commission believes a violation of Section 5 or 12 has occurred or is occurring, we can either issue an administrative complaint or seek preliminary or permanent injunctive relief in federal court under Section 13 of the FTC Act.[5] In recent years, we have successfully used Section 13 injunctive authority to halt fraudulent or deceptive activities and secure redress for consumers.

The FTC is, of course, not the only agency that is involved in the fight against fraud. At the federal level the Postal Service vigorously polices mail order fraud. Similarly the Food and Drug Administration combats health care quackery, and the Department of Justice brings criminal fraud cases. Federal involvement in this area, however, is not the first or in many cases the most important level of consumer protection. State and local consumer protection agencies, particularly State Attorneys Generals' offices, provide a crucial first line of protection for consumers. Similarly, the Better Business Bureaus make important contributions in detecting and preventing consumer fraud. Not only are these agencies active in their own right, they participate in joint programs. For example, the Food and Drug Administration and Better Business Bureaus recently sponsored a joint mailing to newspaper and magazine advertising managers offering assistance in reviewing advertisements for fraudulent medical or health claims.

The FTC also makes every effort to coordinate our efforts closely with those of other agencies. Just last month, for example, we filed a case against what we alleged to be a bogus hair analysis service that was developed through a joint FTC/FDA investigation. Similarly, in the energy area we maintain an energy fraud clearinghouse that is designed to coordinate case development by both the FTC and the various State Attorneys General's offices. On a broader basis we are also a participant in the National Association of Attorneys General's consumer fraud project.

COMMISSION ACTIVITIES BENEFITING OLDER AMERICANS

Non-health-related activities

Our pursuit of unfair or deceptive activities affecting older Americans extends to many areas beyond food, drug, and other health care claims. I would like to highlight some of the Commission's recent activities in these other areas involving practices that are either targeted at or have a disproportionate impact on older Americans.

Credit

One important way in which the Commission protects older consumers is by aggressively enforcing the age discrimination provisions of the Equal Credit Opportunity Act ("ECOA").[6] Although federal law permits creditors to consider information related to age, creditors may not deny, reduce or withdraw credit solely because an otherwise qualified applicant is over a certain age. Furthermore, retirement income must be included in rating a credit application, and credit may not be denied or withdrawn because credit-related insurance is not available to persons of a certain age. Until recently the Commission had not filed any actions under the age discrimination provisions of the ECOA, in part because of the difficulty of developing evidence. Discrimination is often difficult to detect, for example, because the creditor simply discouraged applicants or destroyed applications, or because creditors use subjective evaluation criteria.

Under this administration, the Commission has begun employing innovative techniques, such as econometric models, to detect discriminatory practices. As a result, in 1983 the Commission issued its first age discrimination complaint ever. The complaint charged a large finance company, Aristar, Inc., with illegally denying loans to older applicants, including those relying on public assistance or retirement benefits, because of their age or because they were not employed full-time. The Commission

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[3] 15 U.S.C. § 52 (1982).

[4] The Commission also enforces a number of other statutes, including the Equal Credit Opportunity Act, which prohibits discrimination on the basis of age as well as a number of other factors. See pages 4–5, infra.

[5] 15 U.S.C. § 53 (1982).

[6] 15 U.S.C. §§ 1691 et seq. (1982).

obtained a consent decree requiring Aristar to pay $90,000 in civil penalties and enjoining such illegal practices in the future.[7]

Last month the Commission filed another case alleging discrimination against elderly applicants in violation of the ECOA. We charged that Landmark Financial Services, Inc. and its fourteen subsidiaries discriminated against elderly borrowers by offering loan terms less favorable than those provided to similarly qualified younger applicants.[8] Specifically, the Commission alleged that Landmark's policy placed a three-month limit on loans to applicants over 70 and a 12-month limit on loans to persons between 65 and 70. The Commission is seeking civil penalties and an order barring Landmark from practicing such discrimination.

In addition, we are investigating several other creditors for possible illegal discrimination, such as discouraging older people from submitting applications and refusing to consider income from retirement sources.

Real estate "loan" transactions

The Commission is also pursuing other types of credit activities relevant to older citizens. During the past few years there have been increasing numbers of foreclosure actions by lenders. This has resulted in "new" businesses that advertise and offer foreclosure help to homeowners in financial difficulty.

In October 1983, we obtained a preliminary injunction against one such company—R.A. Walker and Associates, Inc.[9] The Commission alleged that Walker orally represented that the transactions entered into were "loans" that would enable homeowners to prevent foreclosure. The Commission alleged that the transactions were in fact "sales," with Walker obtaining an absolute deed to the property, so that, in effect, the homeowners became tenants in their former homes. Minority homeowners were particularly affected by the alleged misrepresentations, and a significant portion were elderly.

Investment frauds

Our investment fraud program is an excellent example of a program that benefits all consumers, but especially older, retired citizens. Investment frauds, conducted by what are often termed "Wats-Line hustlers," frequently victimize the public through false promises of large returns on "safe" investments. These frauds obviously harm all investors, but they can particularly hurt older investors, who are vulnerable prey for fraudulent operators and who are often ill-prepared to absorb the losses. Some investment fraud firms have bilked consumers of $5,000 to $10,000 each by promising large returns for investments in gemstones, precious metals, or oil and gas leases. These firms usually employ telephone "boiler room" sales persons who use high-pressure, polished sales pitches.[10]

Until this administration, the Commission was generally reluctant to pursue fraud cases. Such cases, especially those involving oral misrepresentations, are very difficult to investigate. Consumers, however, suffer substantial injury as a result of fraudulent practices and the Commission has therefore developed an active fraud program, particularly in the investment area.

Since 1982, the Commission has brought a number of cases and placed 71 named defendants under preliminary or permanent district court orders barring fraudulent and deceptive practices. We have also obtained court orders freezing personal and corporate assets that may be used for consumer redress—for example, in one case alone we obtained an order freezing $10 million in assets. We estimate that we have halted frauds that could have cost consumers $224 million if allowed to continue. Recently, we obtained a settlement netting over $6.7 million in consumer redress from International Diamond Corp.,[11] formerly the largest investment diamond seller in the United States.

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[7] *United States* v. *Aristar, Inc.*, No. 83-0719 (S.D. Fla. Apr. 1, 1983). Consent agreements are for settlement purposes only and do not constitute admission of a law violation.

[8] *United States* v. *Landmark Financial Services, Inc.*, Civ. No. N-84-3510 (D. Md. Sept. 17, 1984).

[9] *FTC* v. *R.A. Walker & Assoc., Inc.*, Civ. No. 83-2962 (D.D.C. Oct. 5, 1983).

[10] Commission staff have found that when the salespeople learn that their target is an older person, they try to befriend the person. While purporting to become a "friend," they proceed to bilk the investor of his or her life savings. If the "friend" technique does not work, the salesperson becomes insulting and abusive, sometimes spending hours on the phone browbeating the target. As a result, older investors are sometimes intimidated into turning over their life savings.

[11] *FTC* v. *Int'l Diamond Corp.*, Civ. No. 82-0873 (N.D. Cal. 1984).

Older consumers are also attractive targets for deceptive promotions of franchises. For example, the advantage of business opportunity ventures—supplemental income, control over working conditions (i.e., being your own "boss"), and a need for few additional skills—may appeal to many older consumers. The investment may involve a significant amount of money for those involved. Moreover, older consumers may suffer more than younger ones from losing their investment, which may have been set aside as a retirement "nest egg," because they cannot easily recoup it through future earnings.

Alleged misrepresentations by franchisors of earning potential, right to exclusive territories, or product quality have led the Commission to challenge such diverse franchise sales programs as auto parts distributorships,[12] energy management microprocessors,[13] and snack foods.[14] Unsuspecting individuals were investing between $3,000 and $24,000 in these franchises based on the alleged misrepresentations. Where these practices are accompanied by violations of our rules, we have also sought civil penalties.

Funerals

Another prime example of a Commission activity that helps older Americans is the Funeral Rule. This Rule, which just recently became fully effective, is intended to increase consumer access to relevant information, such as price and legal requirements regarding funeral goods and services. The rule is designed to help all people arranging funerals, but is particularly expected to help older people, such as surviving spouses, to obtain needed information during a painful and vulnerable time.

Energy cases

Another area we have been particularly alert to is deceptive energy savings claims. With the rise of energy costs, people today are seeking ways to conserve. Retired individuals, who may spend most of their time at home and who often live on fixed incomes, are especially likely to be interested in energy conservation. The market has responded with a host of new devices designed to cut energy bills. Although this response is desirable, and most new entrants are honest businesses making honest claims, some businesses overstate the benefits of the new product. The public often is unable to gauge whether the product does what it claims to do. And because many of the companies are new, people often lack the reputation information that so often serves as a guide to honesty and reliability. Examples of Commission actions in this area include orders against manufacturers of storm windows, solar energy equipment, and cellulose insulation.

The foregoing discussion is not exhaustive of the Commission's non-health activities that have a particular impact on older people, but it does illustrate the agency's ongoing enforcement efforts in this area.

FOOD, DRUG, AND HEALTH CARE PRACTICES

Older citizens, those 65 and over, spend almost three times as much per capita on health care as other adults. Consequently, the Commission's health-related activities, which address nearly every facet of health care delivery of concern to older Americans, have particular significance for them.

Deceptive food, drug, and health care claims that induce people to purchase ineffective cures and nostrums are especially important areas for Commission enforcement activity because of the injury that can result. First, purchasers are injured economically when they pay for cures and remedies that do not work. Second, the bogus cure may itself jeopardize purchasers' health and safety. A third and important form of injury occurs when ineffective or quack remedies divert purchasers from legitimate medical treatment that could relieve their problems.

As part of its effort to protect the public, the Commission continually monitors advertising for unfair and deceptive claims, emphasizing food, drug, and health care claims because of their potential for causing serious injury. However, ads for some types of products, such as those that might be characterized as "quack" remedies, may never appear on the radio and television networks or in major newspapers and magazines. Consequently, we have implemented special monitoring programs to detect ads for these products. This program monitors ads in health magazines catering to individuals who believe in non-traditional treatments for diseases, and tabloid

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[12] *United States* v. *Royco Automobile Parts, Inc.*, No. 83-1208, Civ. J-12 (M.D. Fla. Jan. 3, 1984).

[13] *United States* v. *Federal Energy Systems, Inc.*, Civ. 84-2158, (C.D. Cal. Apr. 12, 1984).

[14] *United States* v. *Ferrara Foods, Inc.*, Civ. No. 83-0037 1984).

publications, where ads for "quack" products typically appear. Our efforts have proved quite successful in identifying targets for Commission action. We have also initiated projects and identified targets on the basis of our ongoing contacts with other federal and state officials. For example, our Regional Offices maintain ongoing relationships with the State Attorneys Generals in their respective regions. The FTC Regional Office responsible for protecting Oregon consumers is located in Seattle, Washington. The director of that office, as well as his staff, meet periodically with the Oregon Attorneys General's staff to exchange information and discuss enforcement issues. We also obtain tips and project ideas from private groups such as the American Association of Retired Persons (AARP).

FOOD AND DRUG ADVERTISING

The Commission has emphasized policing false and deceptive claims in food advertising. A U.S. Department of Agriculture study showed that persons over 65 spend about twenty-two percent of pre-tax income on food, compared to seventeen percent for persons under 65. For the poor in this group, this increases to as much as forty percent. Older consumers, who watch more television than any other group, are heavily exposed to food advertising. Consequently, the Commission's staff conducts extensive monitoring to determine current issues in food advertising and to identify new ad campaigns presenting the greatest potential for consumer injury. For example, the staff's monitoring indicates that nutritional and other composition claims—e.g., low-sodium, low-sugar, low-calories, fiber content, caffeine—are now particularly popular in food ads. Moreover, recent research conducted by the Roper Organization confirms that low-sodium and low-sugar claims are important to consumers.

Currently, the Commission has many more initial phase investigations of food ads than in previous years, and I expect that the Commission's expanded efforts will pay off, both in terms of the quantity and quality of our actions and in our ability to move quickly against law violators.

A good example of a case in which we moved quickly against an ongoing deceptive food campaign is PharmTech, which claimed that its dehydrated vegetable capsule, "Daily Greens," would reduce the incidence of cancer. PharmTech began a massive national advertising campaign, claiming support for its claims from a recent report of the National Academy of Sciences. The Commission obtained a preliminary injunction in federal court temporarily halting the advertising. The Commission's complaint alleged that the report did not in fact provide such support, and the Commission ultimately obtained a consent agreement with PharmTech permanently barring such claims.[15]

In March 1984, the Commission brought an action against General Nutrition, Inc., charging that it falsely advertised a similar product called "Healthy Greens."[16] General Nutrition is a large retailer of health-related products, with annual sales of over $350 million and over 1,000 retail stores nationwide. The Commission staff is seeking a cease and desist order against General Nutrition to prevent allegedly false or unsubstantiated claims for "Healthy Greens" as well as all other products marketed with claims of disease prevention or cure. The case is currently progressing toward trial.

In addition to pursuing products making prevention claims, the Commission staff also examines performance and therapeutic claims. For example, in January, the Commission issued a complaint against P. Leiner Nutritional Products[17] concerning nationally advertised claims that its wheat germ oil pill, Octacol 4, improves vigor, stamina, and endurance—claims the Commission alleges are unsubstantiated. This case also is progressing toward trial.

The Commission has also sued Estee Corp.,[18] a manufacturer of food products for diabetics regarding therapeutic claims for its foods. That case ended with a consent order prohibiting certain misleading claims, including representations that the advertised food will not elevate the blood sugar level of diabetics, and a $25,000 payment by Estee to a diabetes research organization.

In the area of drug advertising we pursue many types of fraudulent and deceptive claims, including performance, pain relief, and safety claims. All of these are likely to be important to older consumers due to their higher incidence of health problems.

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[15] Docket No. 9168 (May 1984).
[16] Docket No. 9175 (1984).
[17] Docket No. 9172 (1984).
[18] Docket No. C-3126 (Nov. 16, 1983).

A number of our investigations also involve cure claims for arthritis—a condition affecting millions of older Americans. Because it causes substantial suffering and has long-term debilitating effects, arthritics are particularly vulnerable to claims that a "miracle" product will stop their pain and suffering.

The staff has also pursued products making arthritis relief claims. For example, the Commission recently accepted a consent order (subject to final approval) with Biopractic Group, Inc., to settle charges concerning claims it made for its Therapeutic Mineral Ice product.[19] According to the complaint, Biopractic claimed that Mineral Ice (a topical rub) relieves inflammation and stiffness characteristic of arthritis and other musculoskeletal ailments without having a reasonable basis to support those claims. The complaint also charges that Biopractic falsely claimed that doctors and medical centers praised Mineral Ice. Under the agreement, Biopractic is prohibited from making these claims about Mineral Ice unless it has adequate substantiation. To make claims of relief from inflammation and stiffness caused by arthritis and other musculo-skeletal diseases Biopractic must satisfy U.S. Food and Drug Administration standards or provide evidence from two well-controlled clinical tests.

Also, in this area the Commission several years ago sued Thompson Medical Co. over its claims for the topical rub "Aspercreme," a product which, I should add, does not contain any aspirin. In June 1983, an Administrative Law Judge found that the company had deceptively advertised that Aspercreme was more effective than aspirin. The case is now on appeal to the full Commission.

The staff's special monitoring activities have also resulted in investigations of a relatively new phenomenon—anti-aging advertising claims. Although scientists have recently advanced a number of theories to explain the aging process, there is no consensus as to the validity of any of these theories. Nonetheless, a number of companies are using these theories to advertise drugs and food supplements, making bold claims that the products will retard aging. The Commission is investigating several of these companies to determine if their ad claims are false or unsubstantiated.

Finally, the Commission recently obtained a consent agreement against Adria Labs,[20] the manufacturer of an over-the-counter analgesic named Efficin. The order prohibits Adria from making safety claims comparing Efficin to aspirin without also disclosing that it may produce side effects similar to those produced by aspirin.

Other health care claims or practices

In addition to pursuing deceptive food and drug claims, the Commission has actively pursued a wide range of other practices relevant to the health needs and concerns of older Americans.

The Commission has, for example, examined services designed solely for older consumers, such as life care facilities. "Life care" is a concept whereby an older citizen, at a certain minimum age, purchases a life lease in a living unit, paying an entrance fee and monthly service fees. In addition to the life lease, the resident is entitled to various services and amenities, including guaranteed lifetime nursing care.

In 1983, the FTC investigated certain practices by Christian Services International, Inc. [CSI], which has developed, marketed, and/or managed approximately 200 life-care homes in fifteen states. CSI's homes guarantee lifetime living accommodations, meals, and medical services. Under the terms of the consent agreement we obtained in the case, CSI may not represent that any religious group is affiliated with its life-care homes or is legally or morally responsible for the homes' debts, unless that is the case.[21] In addition, CSI must provide prospective residents with a statement: (1) detailing any religious affiliation or explaining that there is none; (2) disclosing that entering into the contract may involve significant financial risk; and (3) advising them to seek independent advice before signing.

In addition to monitoring life-care facilities, the Commission is examining the nursing home industry to determine whether unfair or deceptive practices exist. Currently about 23,000 nursing homes provide care to approximately 1.4 million older residents in the United States. Allegations have been made that some nursing homes fail to disclose important information to potential residents prior to admission. Others have charged that some homes charge inflated prices, or even charge for services not rendered, and conceal their practices by failing to provide itemized bills. The Commission's study is designed to collect systematic evidence regarding

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[19] Biopractic Group, Inc., File No. 842-3207 (Oct. 3, 1984) (Commissioner Pertschuk and Bailey dissented on the grounds that different relief should have been sought.)

[20] Docket No. C-3135 (June 5, 1984).

[21] Docket No. C-3127 (Oct. 27, 1983).

the existence and incidence of these and other alleged practices and their potential for injury to prospective and actual nursing home residents. It is hoped that this will provide the Commission with information needed to pursue unfair and deceptive nursing homes practices that may harm older people and their families.

The Commission also has pursued several cases involving alleged bogus cures for what may be worthless products. For example, the Commission obtained a consent order against two Miami health professionals [22] who advertised "cold" laser facelifts, claiming that they were less expensive than traditional cosmetic facelift surgery and that they had a revolutionary method of removing wrinkles. The order bars representations that laser treatments result in a non-surgical facelift unless there is reliable support for the claim. In addition to obtaining the consent order, the Commission has sent advisory letters to all state attorneys general and to the relevant professional associations alerting the officials to the Commission action, including a copy of the order, and offering Commission assistance on legal and technical issues. The Commission also has used a consumer education project to warn consumers that by purchasing unproven laser treatments, they may lose their money, not their wrinkles.

In another case, the Commission obtained a consent judgment against Braswell, Inc., to settle charges that the company could cure or prevent baldness when, in fact, the process did not work. The judgment permanently enjoins that company from representing that any product or service will cure or prevent hereditary baldness, unless it has approval from the Food and Drug Administration. The Commission obtained a $610,000 judgment for civil penalties from the company, as well.

The Commission also recently obtained a consent agreement with the president of a weight control center, who agreed not to misrepresent the effectiveness of his diet devices.[23] According to the complaint, advertising for the Acu-Form ear-mold claimed that wearing the ear-mold (which was made of plastic embedded with steel pellets to stimulate acupuncture points) would control hunger, and purchasers could then lose weight effortlessly. The ear-mold and weight-loss counseling usually cost $300.

Finally, the Commission has sued a hair analysis testing service charging that the defendants made false claims about the testing services.[24] According to the FTC's complaint, the ads claim that the hair analysis identifies the consumer's bodily mineral deficiencies and excesses and that these are associated with physical and mental disorders such as diabetes and arteriosclerosis. The Commission further alleged that the defendants' recommendation to repeat the hair analysis every four months and to check the results of taking dietary supplements sold by the defendants may lead some individuals to forego proper medical attention during that time exposing them to substantial health risk or injury. The Commission is seeking an order that will permanently bar the sellers from making deceptive claims. The litigation is continuing, but we have already obtained temporary restraining orders against the defendants barring misrepresentations regarding the use of hair analysis to diagnose health conditions and preserving defendants' assets for possible redress to purchasers.

Our activities, however, are not limited to law enforcement and similar activities; we also emphasize business and consumer education to prevent violations and to improve the functioning of the marketplace. In recent years, the Bureau's Consumer and Business Education Office has produced messages on health related topics in a variety of areas—eyeglasses, generic drugs, contact lenses, laser facelifts, food and nutrition.

The Commission has also worked closely with the American Association of Retired Persons ("AARP") in developing a number of consumer education campaigns designed to assist older Americans. In 1983, we jointly developed and distributed "How to Write a Wrong," a booklet that explains how to complain effectively about consumer problems and obtain results. The booklet focuses on particular on how to avoid and deal with problems that arise in door-to-door and mail order promotions. Over 50,000 copies of this booklet have already been distributed.

We are currently working with AARP on two additional consumer education projects. The first is designed to assist older Americans in selecting the services of health care professionals. The second is aimed at providing older Americans with information on housing options, focusing on both independent and assisted living.

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[22] Spinal Health Services, Inc., C-3122 (Oct. 13, 1983).
[23] Thomas A. Dardas, C-3144 (Oct. 1, 1984).
[24] *FTC* v. *Furman*, 84-0803-A (E.D. Va. filed Aug. 6, 1984).

REMEDIES AVAILABLE TO THE COMMISSION

While not exhaustive, the above discussion illustrates the Commission's ongoing activities in the food, drug and health care areas. In this discussion I have sometimes referred to remedies the Commission has been able to obtain. I would now like to describe in more detail the law enforcement tools available to the Commission.

The Commission, as a civil enforcement agency, lacks authority to initiate criminal proceedings. Thus, the law enforcement tools available to the Commission are civil remedies such as administrative cease and desist orders, federal court injunctions, consumer redress, industry-wide guidelines, trade regulation rules, and civil penalties for violations of Commission orders and rules. The Commission also seeks to obtain voluntary compliance when it can be more efficient and effective.

The Commission has used the available tools aggressively and creatively to enforce our statutes. We have increasingly used our statutory authority to seek injunctions quickly in federal court. In fraud cases, we have been able to obtain orders freezing assets where we have been concerned that the company's assets would be dissipated before we could obtain redress.[23] When firms have sought refuge in bankruptcy, we have continued our efforts, often pursuing individual as well as corporate assets in bankruptcy courts.[24]

In addition to obtaining substantial civil penalties or consumer redress, the Commission has experimented with new remedial approaches to respond to fraud or deception. This has included consumer arbitration mechanisms,[25] redress in the form of health research grants,[26] and payments from individual respondents to remedy the injury that their companies have caused.[27]

Although the Commission has been very successful in combatting fraud, we have encountered some obstacles. The Commission's existing authority is most effective against stable, national firms; its limitations become clear when it is used to prosecute smaller fraudulent operators. Our procedures for obtaining information—for example, information to determine whether violation has occurred or the amount or location of a company's assest—contain impediments that may prevent the staff from obtaining information quickly from an uncooperative company. This is in marked contrast to the streamlined procedures available to agencies such as the Department of Agriculture and the Food and Drug Administration, which are authorized to obtain criminal search warrants in certain programs.

Another evidentiary problem with our CID authority concerns an ambiguity about whether we have the authority to obtain physical evidence. While we believe we have the authority it is not specifically set out in our statute, as it is under Rule 34 of the Federal Rules of Civil Procedure. Thus in some instances during investigations the staff may be reluctant to ask for physical evidence—for example, the hair testing analysis machine in the case I mentioned earlier—because of the procedural disputes that may arise.

Other problems we encounter in pursuing companies and individuals engaged in allegedly fraudulent activities—as opposed to legitimate firms whose practices may occasionally violate the law—are procedural. For example, to initiate a case in federal court, the complaint must be served on all the defendants. When the Commission sues individual officers or owners of businesses engaged in allegedly fraudulent activities, the Commission may have difficulty serving the complaint if, for example, the intended recipients refuse to answer the door at home, or refuse to let the process server into their office, or if they live outside the jurisdiction in which the company does business. In one recent case, difficulty in effectuating service led the Commission's staff to chase individuals across town and to stake out an airport to serve defendants we believed were going to leave town. It would be preferable if service for federal court actions were similar to service procedures under the FTC Act for serving administrative complaints or orders or other processes of the Commission.[28] Under the FTC Act, service upn officers or owners of businesses who are named in their individual capacity in a complaint, may be effectuated by leaving a copy of the complaint at their principal office or place of business.

Another procedural problem concerns venue. Presently under Section 13(b) we may only sue defendants where they reside or transact business. In some instances,

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[23] E.g., *FTC* v. *U.S. Oil & Gas Corp.*, No. 83-1702, Civ. WMH (S.D. Fla. Dec. 23, 1983).
[24] E.g., *FTC* v. *R.A. Walker & Assoc., Inc.*, Civ. No. 83-2962 (D.D.C. Oct. 5, 1983).
[25] General Motors Corp., Docket No. 9145 (Oct. 16, 1983).
[26] Estee Corp., Docket No. C-3126 (Nov. 16, 1983).
[27] *FTC* v. *U.S. Oil & Gas Corp.*, No. 83-1702, Civ. WMH (S.D. Fla. Sept. 27, 1983).
[28] 15 U.S.C. § 45(f) (b).

a number of corporate and individual defendants are engaged in a common scheme in several jurisdictions. For example, we have pursued investigations against individuals who employ large numbers of corporate facades and trade names to accomplish mail order fraud. Even though the individuals and companies are engaged in a common course of action, it may be difficult to establish that there is a single jurisdiction where they are all doing business. Even if we can eventually find and appropriate court, this problem can delay the Commission's investigation, allowing the defendants time to defraud additional consumers. Congress anticipated that this problem might arise in the warranty area, and responded by including in the Magnuson-Moss Warranty Act a provision authorizing district courts, if the interest of justice so required, to permit service of process upon parties who do not transact business or reside in the district where the case is filed.[29] Unfortunately, similar language was omitted from Section 13(b), which serves as the basis for our actions against allegedly fraudulent operators. Adding to Section 13(b) language similar to that found in the Warranty Act would greatly mitigate our concern about venue.

Another problem we sometimes encounter in pursuing fraudulent operators is that they may seek to delay or hinder Commission enforcement actions by seeking refuge in bankruptcy court. Under the Bankruptcy Act, for example, there is an automatic stay of most civil actions—if a debtor files for bankruptcy, the Act prohibits bringing or continuing suits against the debtor in another court. The Commission does not believe that the automatic stay provision applies to its law enforcement actions and so far has been successful in arguing that point.[30] However, examination of this and other issues, such as the Commission's standing as a creditor representing injured consumers in the bankruptcy proceeding, that arise when we become involved in bankruptcy cases could increase our effectiveness in dealing with fraudulent operators.

Another statutory ambiguity that concerns us relates to the parameters of Section 12 of the FTC Act. As I mentioned at the outset, that Section prohibits certain false health-related ads. Specifically, Section 12 prohibits false ads for food, drugs, devices, or cosmetics and Section 15 further defines these terms. At present health services are not expressly included in either section. This may create an anomalous situation in certain cases. For example, while the statute includes devices used in providing the service, it may not include the service itself. While the Commission can always proceed against the deceptive marketing of health care services under Section 5, amending Section 12 to cover "false advertisements" of "health care services" would provide the Commission with an explicit statutory basis for obtaining injunctive and penal relief. It will enable the Commission to provide the District Court with a clear basis on which to enjoin such advertisements, applying the "public interest" standard set out in Section 13(a) of the FTC Act. It also will allow the Commission, in appropriate circumstances, to request that the Attorney General initiate criminal proceedings under Section 14(a) of the FTC Act. With such explicit and additional powers, the Commission can more readily combat deception in the advertising of health care services.

Another potential problem relating to the definitions for drugs and devices is that they refer to articles "for use in the diagnosis, cure, mitigation, treatment, or prevention of disease." Although we believe that articles to relieve pain not related to a specific disease, or articles for the maintenance of good health would be covered by these sections, currently they are not explicitly covered and additional clarification would be useful.

Finally, a major economic and health concern for older Americans is how to pay for the costs of medical treatment that are not covered by Medicare. In an effort to fill this "gap," some insurance companies market Medicare supplemental policies, often through repeated mass mailings of promotional materials to older Americans. For over a decade, responsible state, federal, and industry officials have sought to ensure that these policies are not misrepresented.

One area of current concern to these officials is the alleged practice of some companies to use mass national mailings that imply that the policy is approved or endorsed by some governmental or public interest organization. These promotional materials sometimes make frequent reference to entitlements under government assistance programs, clouding the distinction between governmental benefits and the supplemental coverage marketed by the company. These tactics can harm older Americans by discouraging them from shopping for the best available Medicare supplemental policy or by encouraging them to purchase insurance that they may not

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[29] 15 U.S.C. § 2310(c)(1) (1982).

[30] This point is currently being appealed by a defendant. In re Kimberly Internat'l Gem Corp., CV-84 6941 WJR (C.D. Cal. notice of appeal, filed Sept. 14, 1984).

need. State efforts to respond to this problem can be hindered by understaffing, limitations in state regulations, and the inability of any single state to halt a nationwide scheme of deception. Although the Commission has long had an interest in this area, our ability to bring law enforcement cases and to assist state officials to combat such deception is hampered by the restrictions placed on the Commission in the insurance area. Any effort by the Commission to challenge deceptive national mailings by these direct marketers could well be resisted as outside our jurisdiction and become bogged down in the courts. Yet reliance on individual state insurance departments to end deceptive national mailings may not lead to a timely or complete correction of these abuses.

CONCLUSION

The Commission has and will continue to take aggressive action against companies that engage in fraudulent practices affecting older consumers, particularly parctices or claims in the food, drug and health care area. The Commission has also taken significant steps in areas not involving fraud that benefit older Americans. For example, the Commission has devoted particular attention to possible problems in the vision care area. This is an area of great concern to persons aged 65 and over, more than 90 percent of whom wear corrective lenses. In 1979, the FTC promulgated the "Eyeglasses I Rule,"[31] which gives individuals the right to obtain a copy of their prescription after having their eyes examined, thereby enabling them to comparison-shop of eyeglasses. Although the court remanded the Rule's advertising provisions to determine whether they were still needed in light of the Supreme Court's decision declaring state bans on lawyer advertising unconstitutional,[32] the Commission's proceeding played a part in the movement to remove restrictions on eyeglass advertising, facilitating greater price competition and lower prices. The Commission also actively monitors advertising by health care professionals for deceptive claims, and state or local professional association restrictions that unduly limit truthful advertising. Where appropriate, the staff submits comments to state officials regarding overly restrictive laws. For example, recently the Commission's three bureaus recently jointly submitted comments to Oregon's Legislative Research Office, which was conducting a sunset review of the Oregon State Boards of optometry and dentistry. The Bureaus commented on the competitive effects of laws and regulations prohibiting certain business practices by members of these professions. In addition, in the important area of generic drugs, the Commission's staff, in conjuction with the Food and Drug Administration, proposed a model drug product selection statute for consideration by the states. Several states have adopted the model law in whole or part.

Mr. Chairman, this completes my formal remarks. I am pleased to address any questions you may have.

The CHAIRMAN. We are adjourned.

[Whereupon, at 11:30 a.m., the hearing was closed.]

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[31] Trade Regulation Rule Concerning Advertising of Ophthalmic Goods and Services, 16 C.F.R. § 456 (1984).

[32] *American Optometric Assoc.* v. *FTC*, 626 F. 2d 896 (D.C. Cir. 1980).

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

FEDERAL TRADE COMMISSION,
BUREAU OF CONSUMER PROTECTION,
Washington, DC, December 10, 1984.

Hon. BOB PACKWOOD,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your letter of November 16, 1984, and the questions attached to your letter regarding the statement I presented at the Commerce Committee hearing on October 22, 1984 in Portland, Oregon. I have attached to this letter my responses to your questions. These responses, like my statement before your Committee, represent my own views, and do not necessarily reflect the views of the Federal Trade Commission or any individual Commissioner.

I want to thank you again for giving me an opportunity to present my views regarding the Bureau of Consumer Protection's efforts to combat consumer fraud affecting older Americans. I hope my statement as well as the responses I am furnishing you today are helpful to the Committee in addressing this important issue.

Sincerely,

CAROL T. CRAWFORD, *Director.*

Enclosure.

Question. Your statement indicates that you sometimes encounter difficulty in obtaining evidence during investigations. Could you elaborate on these problems?

Answer. Yes. The types of problems we most commonly encounter take two forms. First, delay in obtaining evidence is a particular problem. Under the present framework the Commission must bring a separate federal court proceeding to enforce its subpoenas and CIDs. This can be a lengthy process. For example, in August 1983, after extensive attempts to secure the company's voluntary compliance, the Commission issued a CID for documents and testimony in connection with a company disseminating possibly false claims or baldness cures and diet programs. The firm filed a motion to quash, which the Commission denied, and ordered compliance. The company, however, refused to produce the required documents, forcing the Commission to institute a district court proceeding. At the hearing, rather than entering an order, the judge asked the parties to attempt to reach agreement. Again, the company was uncooperative. The judge then entered an order compelling full compliance. By that time it was August 1984, over a year after the CID's were issued. Finally, under threat of a contempt citation, the company recently produced documents. *FTC* v. *Intermedic Foundations, Inc.*, No. 84-6203 Civ.-NCR (CID issued August 23, 1983; district court enforcement order issued August 24, 1984).

Second, as I alluded to in my prepared statement, the Commission's current compulsory process authority is based on the Antitrust Civil Process Act and is tailored to that type of investigation, which is usually directed to relatively stable companies. In the case of a fraudulent operation, issuance of compulsory process may do little more than furnish a potential defendant a list of documents to begin destroying. That concern, coupled with the delay entailed in obtaining enforcement orders makes us reluctant to use compulsory process in this type of investigation. Instead, we have had to rely on other investigative techniques.

Finally, as I mentioned in my statement, ambiguity over our authority to obtain physical evidence may make investigating some types of cases more difficult.

Question. At one point in your statement, you indicate that a jurisdiction problem sometimes encountered by the Commission concerns venue.

(a) Why aren't alternative procedures such as multidistrict litigation rules adequate to deal with the Commission's concerns?

(b) Wouldn't a change in the venue provisions of section 13 encourage forum shopping by the Commission and force defendants to litigate cases far from home?

Answer. In response to the first question, in the situations that concern us, a single suit naming all the defendants involved in a common scheme is the most practical and efficient procedure. If we had to file separate suits, the multidistrict rules might permit us to consolidate the cases in a single court for pretrial and discovery purposes, but the cases would have to be filed and tried separately. There is no alternative procedure that would eliminate the inefficiency of filing separate suits in separate courts if there is no single court where venue is proper as to all defendants.

In response to your second question, as I mentioned in my statement, the Magnuson-Moss Warranty Act authorizes district courts, if the interest of justice so requires, to permit service of process upon parties who do not transact business or reside in the district where the case is filed. See 15 U.S.C. § 2310(c)(1). If a similar provision were added to section 13, the Commission could use it in cases involving common schemes to defraud consumers. In such cases there is nothing unfair about forcing some defendants to litigate where other defendants are located. If the Commission tried to use the provision unfairly, to forum shop or to take unfair advantage of some defendants, the district court would not find the procedure to be in the interests of justice and would not approve it.

Question. Your testimony points out the important role the Postal Service, Food and Drug Administration, State Attorneys General, and local Better Business Bureaus play in protecting the elderly from fraud. How closely do you coordinate your activities with these agencies?

Answer. We make every effort to coordinate our activities. We maintain close liaison with both the Postal Service and the Food and Drug Administration. Just recently we filed a case against what we allege to be a bogus hair analysis service. That case was developed through joint investigative efforts by FDA and FTC staff. Similarly, we often rely on Postal Service investigations in the mail order area. We also closely follow the activities of the Department of Justice, State Attorneys General and local Better Business Bureaus, both to avoid unnecessary duplication and to develop leads to new cases.

Question. Your statement mentions that the FTC shares responsibility for law enforcement with the states and with several other federal agencies. Would creation of an interagency task force on consumer fraud improve coordination among the various federal agencies involved in this area?

Answer. Yes, I believe creating a task force could be beneficial. Although the Commission does coordinate its work with Federal and State agencies, a task force would have a broader perspective on each agency's role, and form the basis for a more systematic, Government-wide approach to this problem. We are, for example, already participating in a similar task force in the investment fraud area where we believe our experience in developing cases has been of significant assistance to other agencies. We might similarly profit from other agencies' experience in other areas.

Question. Your statement indicates that, with increasing frequency, fraudulent operators try to take refuge from FTC actions in the bankruptcy courts. Do you feel that legislative changes could help here?

Answer. Yes. As I understand it, concern that fraudulent operators would seek refuge in bankruptcy was one of the principal reasons why prior Commissions were reluctant to pursue fraud cases. Our experience in bringing these cases has confirmed that such businesses will often seek refuge in bankruptcy. We have, however, pursued these cases in bankruptcy court with considerable success to date. For example, we successfully obtained the release of hundreds of packages of mail-order merchandise for which consumers had already paid, but which were sitting in a warehouse pending the company's bankruptcy proceeding. The Commission is also pursuing remedies against a company that fraudulently bought people's homes in the guise of helping them avoid foreclosure.

Despite these successes, the Commission must devote substantial resources to arguing its position in Bankruptcy Court every time such a case arises. Legislative changes could make our role clearer and more effective. These essentially involve clarifying that the Bankruptcy Act's automatic stay provisions do not apply to our enforcement actions, confirming our right to act on behalf of consumers we are seeking to protect, and clarifying the priority of our claims vis-a-vis other creditors.

Statement of Kenneth H. Fletcher, Chief Postal Inspector

I appreciate the opportunity to submit the following statement to this committee on our efforts to prevent and combat crimes against the elderly.

The Postal Inspection Service is the investigative arm of the United States Postal Service. It has investigative jurisdiction over all violations of Federal criminal laws

relating to the Postal Service. The Postal crimes with which the Inspection Service must contend fall into two broad categories: First, those actions which involve a criminal attack upon the Postal Service or its employees, such as armed robberies, burglaries, theft of mail, and assaults on postal employees; and second, those which involve criminal attack upon the Postal Service or its employees, such as armed robberies, burglaries, theft of mail, and assaults on postal employees; and second, those which involve criminal misuse of the Postal System itself such as the mailing of bombs on pornography, and, of course, mail fraud.

The magnitude of these responsibilities is in direct proportion to the size of the Postal Service itself, which last year handled nearly one hundred thirty billion pieces of mail, and has about 679,000 employees, over 39,400 postal facilities, and revenues of about $26,500,000.

The Inspection Service also has responsibility for internal audit in the Postal Service and providing for the security of postal facilities and postal employees. To meet all of these responsibilities, we have about 1,850 postal inspectors; a uniformed postal security force of approximately 2,100 people; and a variety of other support and administrative personnel, including six crime laboratories strategically located throughout the United States. With that brief summary, let me move to the purpose of my statement, which is to address our common interest in protecting the elderly against fraud.

Over a century ago, Congress' desire to protect the public from fraudulent marketing schemes conducted by mail led to the enactment of the criminal mail fraud statute, 18 U.S.C. § 1341. Later, the administrative false representation statue, 39 U.S.C. § 3005 was enacted. The Postal Service uses the provisions of these two statutes—which are among the Nation's first consumer statutes—to combat mail fraud.

The criminal statute provides for fines and imprisonment for intentionally using the mails in furtherance of a fraudulent scheme. It is a powerful deterrent. The administrative statute offers an opportunity to protect the public from becoming victims of schemes to obtain money or property through the mail through false representations. This statute has a very simple mandate—that persons selling goods or services by mail refrain from the use of advertising which will mislead prospective purchasers in any material respect. Its principal sanction is an administrative "mail stop order" issued pursuant 39 U.S.C. 3005. If the violator is willing to change his advertisement to delete all misrepresentations, we will terminate the formal mail stop order proceedings and accept a consent agreement which requires the elimination of misrepresentations and provides for the issuance of a mail stop order should the agreement be violated. A mail stop order prevents the violator from receiving all mail pertaining to the questionable product or service offered.

During fiscal years 1979–1984, the Postal Service issued 669 false representation orders, 223 temporary restraining orders and obtained 1,185 consent agreements.

The Mail Order Consumer Protection Amendments of 1983, enacted last November, have enhanced the effectiveness of the false representation statute. This new law authorizes postal officials to purchase and receive in person, upon payment of the advertised price, products or services sold through the mail. Because our regulations implementing this authority just became effective on March 29, 1984, we have not had extensive experience with the new procedure. Our experience to date, however, would seem to support our expectation that this new authority will eliminate delays of a month or more in obtaining advertised products for testing.

The 1983 amendments also provided that the false representation order may include a cease and desist order. Previously, the statute only authorized the issurance of a mail stop order which directed a postmaster to return to senders mail responding to the particular name and address used in the false representation or lottery scheme. Promoters subject to mail stop orders could circumvent them by changing their address and/or name and continue to operate the scheme without risk of penalty. By authorizing U.S. district courts to impose a civil penalty of up to $10,000 per day against anyone who continues or resumes a scheme which he or she has been ordered to cease operating, the new legislation should deter this practice. Since our implementation of the cease and desist authority on December 9, 1983, 133 orders have been issued. To date, we have not identified any violation of a cease and desist order. Accordingly, no penalty cases have been initiated.

We believe this new law constitues a major step toward making the statute a more effective tool with which to combat mail order misrepresentation schemes.

The Postal Inspection Service has assigned approximately 329 inspectors to investigate mail fraud and misrepresentation schemes, among these inspectors are 10 postal inspector attorneys who, together with a staff of attorneys assigned to the consumer protection division of the USPS Law Department, prepare misrepresentation cases for presentation to administrative law judges.

The specter of mail fraud is particularly vivid for our Nation's 26 million older Americans. Unfortunately many fraudulent schemes tend to prey most heavily on the elderly, who because of fixed incomes or limited mobility often rely on the convenience of mail-order shopping. Because of the nature of the schemes involved in our cases, we believe that a high percentage of the victims of mail fraud and misrepresentation are senior citizens.

Our investigations have revealed that mail fraud schemes concerning easy money makers (e.g., envelope stuffing), distributorships, investment schemes, and medical fraud prey heavily on the elderly.

The Nation's mail system has also been a favorite marketing medium for the sale of worthless or grossly exaggerated pills, potions, and devices for well over a century. The advertising pitches for these products are all too familar.

If one lacks the willpower to control eating, a variety of pills are offered to make the task effortless. If one's genetic code pre-ordains small breasts or baldness, a cream or lotion can be ordered which overrides biology. Loss of memory or declining sexual performance need no longer concern the elderly thanks to the promoter's latest combination of vitamins and minerals.

The common message running through advertisements for these and similar schemes is one of hope. The consumer is told that the product offered for sale is the result of research conducted by those who have been able to tap a source of truth that has eluded the medical and scientific community. Members of the public who are frustrated by medical science's inability to provide a complete, inexpensive solution to their particular problem are often too willing to believe advertisements which promise successful results.

Unfortunately, many of the so-called cures and treatments advertised by unscrupulous operators are dangerous in and of themselves. By urging consumers to rely on mail-order "remedies," advertisers often discourage the afflicted from seeking competent medical treatment until their condition has further deteriorated. Concern for elderly victims prompted us in 1980 to designate the investigation of postal crimes against the elderly as one of our top priorities. We have also appeared before congressional committees on several occasions to highlight the problems mail fraud poses for the elderly and to support legislative initiatives designed to extend further protections to the elderly against deceptive mail order schemes.

In closing, let me emphasize that the key ingredient in any effort to curb the abuses of mail-order swindlers is an increased public awareness of the problem. I strongly believe that the hearings your committee is holding today will help increase the public's awareness.

Thank you for soliciting our comments on this important issue.

Statement of the American Dietetic Association

Assuring Credible Nutrition Information for the American Public

As Americans' interest in nutrition and health continues to grow, so does the variety of medical advice that's available for public consumption. The nutritional guidance available to the American public today ranges from extremely beneficial to valuless or even potentially harmful. Because billions of dollars are wasted each year on health fraud, unproven cures and unnecessary food supplements, The American Dietetic Association condemns the practice of self-proclaimed nutritionists who are duping consumers with such gimmicks and quackery.

Consumers can become their own fact vs. fiction watchdogs by seeking guidance from qualified individuals knowledgeable about the science of nutrition. Legitimate professionals have degrees in nutrition, dietetics or related scientific disciplines—degrees that have been awarded by colleges or universities approved by a regional body recognized by the Council on Post-Secondary Accreditation. They understand the varied interactions between diet, nutrition and health and do not promote diet as a miracle cure or a guaranteed preventive measure. They acknowledge diet as only one factor influencing the condition of a person's health. Knowing that essential nutrients are found in a normal balanced diet, a true nutrition professional does not advocate specific foods with special health-giving properties and does not generally recommend diet supplements.

Unfortunately, in the absence of licensure statutes in most states, nothing prevents unqualified persons from identifying themselves as "Nutritionists," "Dietitians," or "Diet Counselors." while some of these persons are qualified, those who are not qualified frequently guarantee results through the use of vitamins, minerals, nutritional supplements or other dietary regimens. They ignore effects from nutrient imbalance and the potential of toxicity from excessive doses of vitamins and

minerals and utilize tests and procedures of questionable value such as hair analysis. They present a variety of credentials, including diplomas and certificates as well as advanced degrees. If legitimate, the academic degrees are often in areas unrelated to nutrition. Frequently, they are supplied by "diplomas mills" rather than accredited schools or colleges. Often these nutrition salesmen belong to organizations whose members do not include physicians, registered dietitians and other health professionals.

One way to identify a qualified nutritionist is to look for a person with the title "Registered Dietitian." a Registered Dietitian, R.D., has completed a prescribed course of study at an accredited college as well as approved work experiences supervised by experienced professionals. Also, an R.D. has passed an exam administered by the Commission on Dietetic Registration, a member of the National Commission for Health Certifying Agencies; and has maintained the R.D. status through continuing education. Through the use of Registered Dietitians and other qualified nutritional counselors, health-conscious individuals can avoid squandering their money on worthless treatments and avoid the consequences of the inappropriate treatment of illnesses.

The American Dietetic Association, an organization of over 40,000 registered dietitians, which for years has promoted the optimal health and nutritional status of Americans, advises the public to seek information about diet and health from appropriately trained persons in order to insure their well-being.

EUGENE, OR, *October 9, 1984.*

Senator BOB PACKWOOD,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR PACKWOOD: A short time ago, I sent a newspaper article concerning my experiences in trying to combat medical fraud. There were things that it was impossible for the paper to print on advice of their lawyers. Since the appearance of that article and my testifying before the House Select committee on Aging I have been threatened with a lawsuit.

As a single mother living on AFDC welfare payments I will find it very difficult to fight such a case if it should come to be. What the article does not say is how the system does not work. It not only has wheels which turn slowly, but often do not turn at all. I would like to share that portion of my experiences with you and enter it into the record of your up-and-coming hearing on fraud.

For three years I have fought to initiate an investigation into what I perceived to be a massive case of medical fraud. I also perceive it to be more of a criminal case as opposed to out and out quackery. Though it comes under both headings. The fact that it is a criminal case should have made it easier to initiate an investigation. It did not.

As grateful as I am to Rep. Pepper's office, I also know there is nothing they can do if I am sued and there is nothing they can do to investigate crime in Oregon. I do not think it right for me to do my best in reporting a crime of medical fraud which will go uninvestigated, place myself at the risk I have and then pay the price of possibly winding up in court as a consequence of telling the truth and exposing government agencies who do not do their jobs as well as criminals ripping-off the American public.

I would like to relate now what the newpaper article does not say. In spring of 1984 I agreed at the request of Congressman Pepper's staff to appear at congressional hearings in Washington, D.C. I had been in communication with agencies both local and national. I was forced to turn to Rep. Pepper's Subcommittee hearings as no one would listen to me, accept my complaint or view the evidence. I have every excuse in the book. A citizen literally cannot get anyone in authority in law enforcement to accept a criminal complaint of this nature. They did not want to accept it because they did not want to investigate it.

It was a risk I felt I had to take by naming names at the subcommittee hearings. I have spent three years having to deal with attorneys telling me to "put a dead bolt lock on your door". "expect your house to be burglarized", "put all the evidence in a safe deposit box" and "hope no one does anything to you because no one in law enforcement is going to help you," "Record the phone calls you get from the criminals because they are following your movements."

I tried to report a "provable" crime (everyone agrees on that privately) and the police said it "wasn't their problem". They did refer me to the D.A.'s office. The D.A.'s office cannot investigate because they no longer have a consumer fraud section, nor the funds they say.

To follow the process of making complaints, during this I received telephone calls from criminals. The F.B.I. was telling me that these people are "following your movements, they want to know what you are saying, to whom and what is going to happen."

The F.B.I. told me they could not help me as the U.S. Attorney told them it was not a priority. It is an interstate crime.

The F.B.I. forwarded my complaint to the Inspector Generals office, Health & Human Service, FDA (Seattle Branch). They told me I would be hearing from them soon. I never did and to this day they have not answered my correspondence.

I had sent a report and complaint to the Attorney Generals office on September 14, 1983. They forwarded my complaint to the Board of Pharmacy and Board of Medical Examiners. Neither have jurisdiction on this type of case. Neither of these offices responded to the complaint that I can trace. I had to prod them to get a response. I have since provided a full report to the Attorney Generals office personally to Mr. Frohnmayer and still have no response.

The Board of Pharmacy only has jurisdiction over approved drugs and can't help. The Board of Medical Examiners can't get involved because "We only have jurisdiction over licensed doctors, not criminals". They further informed me that, "perhaps we didn't make ourselves clear to you. We not only have no jurisdiction in this matter, but no interest in medical fraud. This is the final correspondence you will receive from this office." You cannot get help guidance or anything. There is no coordinated effort to fight anything.

The Oregon Medical Association never responded to my inquiries. To comment in any manner when I asked them for at least a "positive statement" on the problem of medical fraud.

The Food & Drug Administration had for years told me that "we are not policemen" it isn't our problem. Our jurisdiction is in "approving or disapproving" drugs etc. not in policing them. The San Francisco office (regional director) told me they could not investigate because it was too "tedious" and therefore could not be justified. I had sent it there as criminal offices were located in California and Oregon was a useless state to pursue.

The Portland FDA was helpful in answering question recently. Though they told me it was too late to investigate now unless I could get more current evidence. It was not my responsibility that I could get no one to read it sooner.

The Federal Trade Commission in San Francisco said they could not tell me if they would investigate or not, because it is a government policy to keep this "secret". Both FDA and FTC officials told me at various times that people like getting ripped-off therefore it was not a problem. I have yet to locate a cancer patient who tells me they wanted to get ripped-off or take some illegal or dangerous treatment to reach that goal. That makes as much sense as saying that women like being raped and therefore they dress in a manner to encourage this. I have come to the conclusion that our government agencies often feel that people deliberately encourage and invite medical fraud by becoming ill.

You may use any portion of this letter for the record of your hearing if you feel it will be helpful. Our county does have a serious and epidemic problem. The corporation I investigated makes $150,000-$300,000.00 per weekend selling illegal treatment methods to the most vulnerable members of our country. It will not matter if Congressman Pepper passes his quackery bill if the laws are not enforced. The ones we already have are not enforced.

I have been told that quackery is rampant in Oregon. Oregon is high on the list for this type of business operation. I hear over and over again that citizens must report quackery. I want to tell you that it doesn't accomplish anything if you do report it. The complaint process does not work. It will not do any good to make public to citizens where and to whom to complain because it will wind up in a file cabinet.

Furthermore, it is time to take the brunt of responsibility off of the victim and put it where it belongs. A victim of medical fraud is often so ill and debilitated that they will not understand the educational information put to them. My stepfather is a victim of Alzheimers disease. This is a brain disease and no amount of education information is going to make sense to him. He cannot keep track of his clothing let alone understand the pit falls of medical charlatans. Thank you for your time and assistance. I hope you will take seriously the information I convey to you and act upon it.

I wish you success in your fraud hearing and hope that it can become more than a readers digest compilation of information. We need more emphasis on enforcement.

Sincerely,

MARILYN K. MEDBERRY.

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